STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

In the Matter of Level 3 Communications,	)	
LLC's Petition for Arbitration Pursuant to	)	
Section 252(b) of the Communications Act of	)	Case No.
1934, as amended by the Telecommunications	)	
Act of 1996, and the Applicable State Laws for	)	
Rates, Terms, and Conditions of	)	
Interconnection with Illinois Bell Telephone	)	
Company d/b/a SBC Illinois	)	

PETITION FOR ARBITRATION

Request for Negotiations Received:	November 29, 2002
9 Month Negotiation Period Commenced:	January 1, 2004 (By Stipulation)
135th Day Thereafter:	May 15, 2004 (By Stipulation)
160th Day Thereafter:	June 8, 2004 (By Stipulation)
9 Months Thereafter:	October 1, 2004 (By Stipulation)

Richard E. Thayer, Esq.
Director – Intercarrier Policy
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield CO 80021
(720) 888-2620
(720) 888-5134 Fax
E-Mail: rick.thayer@level3.com

Erik Cecil
Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1319
(720) 888-5134 Fax
E-Mail: erik.cecil@level3.com

Henry T. Kelly
Joseph E. Donovan
Kelley Drye & Warren LLP
333 West Wacker Drive
Chicago, Illinois 60606
(312) 857-2350
(312) 857-7095
E-Mail: HKelly@KelleyDrye.com
JDonovan@KelleyDrye.com

Dated: June 8, 2003

TABLE OF CONTENTS

I. The Parties. 6

II. The Interconnection Negotiations and Resolved Issues. 8

III. Jurisdiction. 10

IV. Applicable Legal Standards. 11

V. Unresolved Issues. 13

A. Tier I Issues. 15

ISSUE ONE: Single Point of Interconnection 16

ISSUE TWO: Efficient Use of Interconnection Trunks for All Traffic. 19

ISSUE THREE: Transit Traffic. 22

ISSUE FOUR: Defining “Local Call.” 27

ISSUE FIVE: Unbundled Network Elements. 30

ISSUE SIX: Using Interconnection Facilities for Internet Enabled Traffic.32

ISSUE SEVEN: Intercarrier (Reciprocal) Compensation. 34

B. Tier II Issues. 40

ISSUE TEN: Liability for Hazardous Substances and Environmental Hazards Introduced by SBC or Third Parties. 40

ISSUE ELEVEN: NonPayment and Procedures for Disconnection. 42

ISSUE FIFTEEN: Should Level 3 be Permitted to Dispute a Demand for Assurance of Payment? 47

ISSUE SIXTEEN: Should the Performance Measurements Appendix be included in the Interconnection Agreement? 48

ISSUE SEVENTEEN: Out of Exchange Appendix 50

ISSUE EIGHTEEN: Physical Collocation 51

ISSUE NINETEEN: Virtual Collocation. 53

ISSUE TWENTY: Coordinated Hot Cuts Appendix. 54

C. Tier III Issues 54

D. General Terms and Conditions — Tier III Issues 55

ISSUE ONE: Term of Agreement 55

ISSUE TWO: Intervening Law 55

ISSUE THREE: Definitions 55

ISSUE FOUR: Legal Interpretation 56

E. Network Interconnection Methodologies Appendix — Tier III Issues 58

ISSUE ONE: Definition of NIMs 58

ISSUE TWO: Legal Interpretation 58

ISSUE THREE: Collocation and Leased Facilities 58

ISSUE FOUR: Point-to-Point SONET 59

ISSUE FIVE: Provision of Leased Facilities 59

ISSUE SIX: Minimum Notice 59

ISSUE SEVEN: Out of Exchange Traffic 60

F. Interconnection Interconnection Trunking Appendix — Tier III Issues 60

ISSUE ONE: Reciprocal Terms and Obligations 60

ISSUE TWO: Need for ASR 61

ISSUE THREE: Transit Traffic. 61

ISSUE FOUR: Definition and Scope of Trunking Requirements 61

ISSUE FIVE: Interconnection Trunking Requirements 62

G. Intercarrier Compensation Appendix — Tier III Issues 62

ISSUE ONE: Definition and Scope 62

ISSUE TWO: Duties of Parties 62

ISSUE THREE: EAS 63

ISSUE FIVE: Termination Payments for IntraLATA 800 Calls 63

ISSUE SIX: FCC ISP Order 63

H. Recording Appendix — Tier III Issues 64

ISSUE ONE: Obligation of Parties 64

ISSUE TWO: EMI Format Capabilities 64

ISSUE THREE: Maintenance of Message Details 65

ISSUE FOUR: Best Efforts for Delivery of Billing Data. 65

ISSUE FIVE: Indemnification 65

I. Out of Exchange Appendix — Tier III Issues 66

ISSUE ONE: Language Duplicative of ITR, NIM and IC Appendices 66

ISSUE TWO: Language Duplicative of ITR Appendix 66

ISSUE THREE: Clarification. 67

J. Clearing House Appendix — Tier III Issues 67

ISSUE ONE: Message Exchange Appendix 67

ISSUE TWO: Billing. 67

ISSUE THREE: Record Processing. 68
K. Emergency Services Appendix — Tier III Issues 69
ISSUE ONE: 911 Call Routing. 69
ISSUE TWO: Responsibility. 69
L. Unbundled Network Elements Appendix — Tier III Issues 70
ISSUE ONE: Obligations. 70
ISSUE TWO: “Lawful UNEs”. 71
ISSUE THREE: Reservation of Rights. 72
ISSUE FOUR: Change of Law Provision. 72
ISSUE FIVE: Switch Conversions. 73
M. Directory Assistance Listings — Tier III Issues 73
ISSUE ONE: Scope and Definitions. 73
N. SS7 Appendix — Tier III Issues 74
ISSUE ONE: Reciprocal Application. 74
ISSUE TWO: Technical Requirements. 74
ISSUE THREE: Charges for SS7 Services. 75
VI. CONCLUSION 75
Negotiation Letters .... Appendix A
Dispute Points List .... Appendix B
Level 3’s Proposed Interconnection Agreement .... Appendix C
Level 3’s Discovery Requests .... Appendix D

PETITION FOR ARBITRATION

1. Level 3 Communications, LLC ("Level 3"), by and through its attorneys hereby petitions the Illinois Commerce Commission ("ICC" or "Commission") for arbitration of certain terms, conditions, and prices for interconnection and related arrangements with Illinois Bell Telephone Company, d/b/a SBC Illinois ("SBC"). This Petition is filed pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996[1] (the "Act"), 47 U.S.C. § 252(b) and pursuant to the procedures for Commission approval of interconnection agreements ordered by the Commission in 83 Ill. Admin. Code Part 761.10 *et seq*. Level 3 respectfully requests that the Commission resolve each of the issues identified in Section V of this Petition by ordering the Parties to incorporate Level 3's position into an Interconnection Agreement for execution by the Parties.

2. This Petition includes (1) the letter signed by both parties stating the stipulated date for filing of this Petition, pursuant to Sections 251 and 252 of the Act[2] (Attached hereto as Appendix A), (2) a list of the unresolved issues (Attached hereto as Appendix B); (3) the proposed Interconnection Agreement which Level 3 requests that the Commission adopt. (the "Proposed Interconnection Agreement") (Attached hereto as Appendix C); and, the Level 3 Discovery Requests served on SBC in coordination with this Petition (Attached hereto as Appendix D).

---

[1] 47 USC § 252(b); Telecommunications Act of 1996, Pub L No. 104-104, 110 Stat 56 (1996) (the "1996 Act"). The 1996 Act amended the Communications Act of 1934, 47 USC § 151 *et seq.* Level 3 refers to the amended Communications Act of 1934 as the "Act."

[2] 47 USC §§ 251 and 252.

3. Level 3 requests that the Commission consider this application pursuant to the Commission's approval of interconnection agreement procedures ordered by the Commission in 83 Ill. Admin. Code Part 761.10 *et seq*.

4. In support of this Petition, Level 3 states as follows:

I. THE PARTIES.

5. Level 3 is a facilities-based competitive local exchange carrier ("CLEC") licensed to provide basic local exchange service throughout the State of Illinois. Level 3 is a Delaware limited liability company with its principal place of business at 1025 Eldorado Boulevard, Broomfield, Colorado, 80021. Level 3 agrees to accept electronic service as provided for in 83 Ill. Admin. Code Part 761.1050.

6. Illinois Bell Telephone Company, d/b/a SBC Illinois ("SBC"), a subsidiary of SBC Communications, Inc., is an Incumbent Local Exchange Carrier in Illinois within the meaning of Section 251(h) of the Act.[3] Within its operating territory, SBC has been the incumbent provider of telephone exchange service during all relevant times.

7. According to Commission records, According to Commission records, SBC's regulatory contact for the state of Illinois is Rhonda Johnson, Vice President Regulatory, 555 Cook St., Fl. 1E, Springfield, Illinois 62721.

8. All correspondence, notices, inquiries, and orders regarding this Petition should be served on the following individuals for Level 3.

[3] 47 USC § 251(h).

Richard E. Thayer, Esq.
Director – Intercarrier Policy
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield CO 80021
(720) 888-2620
(720) 888-5134 Fax
E-Mail: rick.thayer@level3.com

Erik Cecil
Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021
(720) 888-1319
(720) 888-5134 Fax
E-Mail: erik.cecil@level3.com

and,

Henry T. Kelly
Joseph E. Donovan
Kelley Drye & Warren LLP
333 West Wacker Drive
Chicago, IL 60606
(312) 857-2350
(312) 857-7095 Fax
E-Mail: HKelly@KelleyDrye.com
JDonovan@KelleyDrye.com

9. During the negotiations with SBC, the primary contacts for SBC have been:

Nicola Erbe
Attorney
SBC Legal Department
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105
(415) 836-1414
(415) 957-8744 Fax

and,

Tonine Megger
SBC Industry Markets
Area Manager, Negotiations

350 N. Orleans, Flr. 3
Chicago, IL 60654
(312) 335-6757
(312) 245-0254 Fax

II. THE INTERCONNECTION NEGOTIATIONS AND RESOLVED ISSUES.

10. Since its operations in the state began, Level 3 has operated under the terms and conditions of Interconnection Agreements with SBC, previously approved by the Commission.[4] Level 3 and SBC began negotiations toward a successor agreement on November 29, 2002, which was the date upon which SBC received Level 3's request to negotiate a new agreement. (A copy of Level 3's request letter memorializing the starting date of negotiations is attached hereto as Appendix A).[5] During the course of negotiations the parties have agreed to three amendments which the parties have submitted to the Commission, and which the Commission has approved. In addition, the parties executed their first letter to extend the arbitration window on June 25, 2003. From some period thereafter, the Parties held conference calls approximately twice a week, usually for at least 2 hours per call to expedite the negotiation process. Several months later both parties agreed that more time was needed to continue negotiations. On September 4, 2003 the Parties again, by letter agreement, extended the arbitration window for an additional two months. The Parties continued their twice weekly, two-hour negotiation sessions throughout this period. Despite these additional and extended negotiation efforts, the Parties determined more time was still required, so by letter dated October 14, 2003, and executed by

[4] The Commission approved Level 3's first Interconnection Agreement with then-Ameritech in ICC Case No. 98-NA-019 on August 12, 1998. The current Interconnection Agreement with SBC was approved by the Commission as a result of an arbitration in ICC Case No. 00-0332 in *Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois,* ICC Case No. 00-0332, Arbitration Order, August 30, 2000.

[5] The letter is dated November 27, 2002, and was sent by overnight delivery to SBC's negotiator. However, because the next day was Thanksgiving, Level 3's records indicate that the letter was not received by SBC via overnight delivery or facsimile until the following business day, November 29. As such, the applicable date for the start of negotiations is November 29, 2002.

both Parties, the arbitration window was extended for an additional four months. This new arbitration window opened on February 19, 2004 and closed on March 15, 2004. As that date approached, the parties significantly narrowed the remaining issues to two.

11. Despite the fact that the negotiations had resolved almost all issues, during the last week of February, SBC suddenly proposed that the parties start negotiating anew from an entirely different, and what SBC claimed was an "updated," negotiation template. Although Level 3 was hesitant to restart negotiating after having virtually completed substantive negotiations and having filed several amendments to the existing agreement over the past fifteen months, SBC was unwilling to proceed in any other manner. Therefore, in the spirit of good faith negotiations, Level 3 agreed to extend the window a fourth time to permit Level 3 to review SBC's request for full re-negotiation of a comprehensive agreement using the new SBC-proposed template. Accordingly, by letter dated March 5, 2004 the Parties agreed extend the Arbitration window until March 29, 2004.

12. Level 3's review of the new SBC template showed that extensive renegotiation would be required of issues which Level 3 understood were not previously disputed by SBC. In effect, SBC was demanding that virtually the whole cycle of negotiation begin again.

13. On March 26, 2004, the parties then further extended the arbitration window by four weeks, setting the window close date to April 26, 2004. On April 16, 2004, the parties further extended the arbitration window and agreed to stagger the dates by which petitions for arbitration must be filed in each of the thirteen SBC operating states. On April 23, 2004, the parties extended the arbitration window for the last time, stipulating to a June 7, 2004 close date for Illinois. Included in Appendix A is a copy of a stipulation by the parties setting forth the

agreed dates by which petitions for arbitration must be filed. Accordingly, this Petition is timely filed within the arbitration window stipulated by the parties.

14. In an effort to reach a mutually agreeable successor to their expiring interconnection agreement, Level 3 and SBC have exchanged correspondence with respect to the proposed contract between them. While, prior to the entry of SBC's new template, the Parties had reached agreement on many provisions of the contract, some issues remained in dispute. The Parties have not resolved differences over contract language and policy issues which are substantial and critical to Level 3's business plans, and the potential issues have grown voluminously due to SBC's new template.

15. Thus, Level 3 seeks arbitration of the remaining disputes with SBC. Level 3 will continue negotiating with SBC in good faith after this Petition is filed, and hopes that many of these issues can be resolved prior to any arbitration hearing. To facilitate resolution of these issues, Level 3 will participate in Commission-led mediation sessions, if available.

16. Level 3 and SBC agreed as part of the initial negotiations to use the existing Level 3-SBC interconnection agreement, approved by the Commission, and as amended by agreement of the parties and the Commission, as the baseline for the new contract.

17. The May 27, 2003, Second Amendment (Compensation) continues to be enforceable at least up through December 31, 2004 regardless of the outcome of this arbitration.

III. <u>JURISDICTION.</u>

18. Under the Act, parties negotiating for interconnection, access to unbundled network elements, or resale of services within a particular state may petition the state commission for arbitration of any unresolved issues during the 135th to the 160th day of such

negotiations.[6] The statutorily prescribed period for arbitration expires on the date set forth in Appendix A. Accordingly, Level 3 files this Petition with the Commission on this date to preserve its rights under Section 252(b) of the Act and to seek relief from the Commission in resolving the outstanding disputes between the Parties. Pursuant to Section 252(b)(4)(C) of the Act,[7] this arbitration is to be concluded not later than nine months after the applicable request for negotiations, which for purposes of this petition is September 24, 2004.

Request for Negotiations Received:	November 29, 2002
9 Month Negotiation Period Commenced:	January 1, 2004 (By Stipulation)
135th Day Thereafter:	May 15, 2004 (By Stipulation)
160th Day Thereafter:	June 8, 2004 (By Stipulation)
9 Months Thereafter:	October 1, 2004 (By Stipulation)

19. This Commission has jurisdiction over this Petition for Arbitration pursuant to Section 252(b)(1) of the Act.[8]

20. Under the Act, parties to a negotiation for interconnection, access to unbundled network elements ("UNEs"), or resale of services within a particular state have a right to petition the state commission for arbitration of any open issues when negotiations between them fail to yield an agreement.

IV. APPLICABLE LEGAL STANDARDS.

21. This arbitration must be resolved under the standards established in Sections 251 and 252 of the Act, the rules adopted and orders issued by the Federal Communications Commission ("FCC") in implementing the Act, and the applicable rules and orders of this Commission. Section 252 of the Act requires that a state commission resolving open issues through arbitration:

[6] 47 USC § 252(b).

[7] 47 USC § 252(b)(4)(C).

[8] 47 USC § 252(b)(1).

(1.) ensure that such resolution and conditions meet the requirements of section 251, including the regulations prescribed by the [FCC] pursuant to section 251; [and]

(2.) establish any rates for interconnection, services, or network elements according to subsection (d) [of section 252].

22. The Commission may also, under its own state law authority, impose additional requirements pursuant to Section 252(e)(3) of the Act, as long as such requirements are consistent with the Act and the FCC's regulations.[9]

23. The Commission should make an affirmative finding that the rates, terms, and conditions that it prescribes in this arbitration proceeding are consistent with the requirements of Sections 251(b) and (c) and 252(d) of the Act.

24. Section 252(d) of the Act sets forth the applicable pricing standards for interconnection and network element charges as well as for transport and termination of traffic. Section 252(d)(1) states in pertinent part that "[d]eterminations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment. . . and the just and reasonable rate for the network elements . . . shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit." Section 252(d)(2)(A) further states in pertinent part that "a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of another carrier;

[9] 47 USC § 252(e); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98**,** First Report and Order, 11 FCC Rcd. 13042, ¶¶ 233, 244 (1996) ("*Local Competition Order*").

and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls."[10]

V. UNRESOLVED ISSUES.

25. The Proposed Interconnection Agreement consists of the following numbered Appendices:

General Terms and Conditions
Appendix 1: Interconnection Trunking
Appendix 2: Recording
Appendix 3: Reciprocal Compensation
Appendix 4: Physical Collocation
Appendix 5: Virtual Collocation
Appendix 6: Unbundled Network Elements
Appendix 7: Network Interconnection Methods
Appendix 8: Number Portability
Appendix 9: Numbering
Appendix 10: Out of Exchange Traffic
Appendix 11: Emergency Services / 911
Appendix 12: OSS - Resale
Appendix 13: Coordinated Hot Cuts
Appendix 14: Clearinghouse
Appendix 15: Directory Assistance Listing
Appendix 16: Performance Measures
Appendix 17: Pricing
Appendix 18: SS7

26. Level 3 and SBC have reached agreement on a number of issues during the course of the negotiations. However, numerous issues remain open and unresolved, especially since the belated introduction of the SBC new agreement template in February, 2004. A list of unresolved issues is set forth in Appendix B to this Petition, as well as the proposed language of

[10] 47 U.S.C. § 252(d)(2)(A).

the actual agreement, which is set forth as Appendix C.[11] Appendix B is organized by topic. Appendix B states each unresolved issue, assigns the issue a number, identifies the section(s) of the Proposed Interconnection Agreement which are affected by the issue, and sets forth the positions and the proposed language for the Interconnection Agreement of Level 3 on each issue.

27. Although the parties originally agreed to prepare a joint "Disputed Points List" ("DPL"), they were unable to do so in part because of the number of drafts exchanged by both parties as negotiations were completed. Accordingly, Level 3 has prepared a DPL to the best of its assessment of where the Parties stand in relation to the issues as Appendix B. Level 3 has also provided space below each issue within which SBC may respond.[12]

28. Attached as Appendix C is Level 3's Proposed Interconnection Agreement. Because of the dispute between the parties on what terms the parties have agreed to, Appendix C contains the Agreement that Level 3 requests that the Commission adopt.[13]

29. This part of the Petition contains three sections. The first summarizes the most substantive, critical business issues that Level 3 categorizes as "Tier I Issues." The second summarizes the remaining substantive issues that must be resolved in order for the agreement to be consistent with applicable law, commercially reasonable and certain in effect. Level 3 categorizes these issues as "Tier II Issues." For the Tier I and II Issues, Level 3 provides: (i) a

---

[11] The second amendment to modify provisions of the existing interconnection agreement during a new contract term was provided to SBC on May 2, 2003, after separate concurrent negotiations to renew the parties' existing intercarrier compensation, interconnection, and trunking amendment failed to reach resolution. Level 3 is willing and eager to negotiate further with SBC regarding the provisions of this second amendment in an effort to narrow the scope of issues presented in this Petition.

[12] To facilitate further discussions and settlement of issues, upon request, Level 3 will provide SBC with an electronic copy of Level 3's DPL so that SBC may reflect its understanding of each of these issues in a form that is convenient for the Commission to reference. Level 3 requests, however, that to the extent that SBC represents issues differently than in the DPL in Appendix B, that Level 3 be afforded an opportunity to respond to any such proposal from SBC.

[13] To the extent that SBC asserts in any response that any of the matters that Level 3 understands to be and has identified as resolved are in fact open issues, Level 3 reserves the right to present its position with respect to such matters as part of this arbitration.

list of the unresolved issues, referencing the section numbers in Appendix C; (ii) a summary of what Level 3 understands to be each Party's position with respect to each such issue (where known), including, where applicable, a statement of the last offer made by each Party; and (iii) a brief statement for each issue describing the legal and/or factual basis supporting Level 3's proposed resolution and the conditions necessary to achieve the proposed resolution. Finally, Level 3 identifies certain language within the agreement that must be modified to be internally consistent, as well as commercially reasonable and in compliance with applicable laws.. Level 3 hopes and expects that the parties will be able to resolve most of these "Tier III Issues" through further negotiations prior to hearing. However, in order to preserve its rights, Level 3 provides a brief summary of each party's position on these remaining issues, with references to applicable contract sections in Appendix C.

A. TIER I ISSUES.

30. There are seven unresolved Tier I issues. The first five relate to the terms and conditions and the manner in which Level 3 and SBC will interconnect their networks:

(1.) Whether Level 3 may establish a **Single Point of Interconnection per LATA** within SBC's operating territory;

(2.) Whether Level 3 may use **local interconnection trunks** for all types of traffic;

(3.) Whether SBC should be required to **Transit Traffic**, or to exchange traffic to other carriers;

(4.) Whether the definition of a "Local Call" is based on industry standards and conventions (using the NPA-NXX of the calling and calling parties) or whether is should be based on an unknown **Geographic** location of the end users;

(5.) (5) Whether SBC is required to provide certain **Unbundled Network Elements** to Level 3.

The remaining Tier I issues relate to the financial arrangements between SBC and Level 3:

(6.) Whether SBC may create economic barriers to restrict Level 3's ability to use its existing network facilities to route its traffic via **Internet Enabling Facilities** (commonly referred to as **VoIP traffic**); and,

(7.) Whether SBC can impose the access charge regime on information services traffic.

TIER I
ISSUE ONE: Single Point of Interconnection

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Network Interconnection Methods, Sections 2.1, 2.2, 2.3, 2.5, 2.7, 4.1, and 4.2.

Interconnection Trunking Requirements, Sections 4.1, 4.2, 4., 5.2.1-5.2.9, 5.3.2, 5.3.3.1, 5.3.4.2 (subject to confirmation for dispute), 5.7.3, and 5.7.4.

Intercarrier Compensation, Sections 3.1 and 3.5.

<u>Statement of the Issue</u>:

Whether Level 3 is permitted to establish a single point of interconnection within the LATA for the mutual exchange of traffic pursuant to Section 251(c)(2) of the Act?

<u>Level 3 Position:</u>

31. Level 3 requests that the Commission confirm Level 3's legal right to interconnect with SBC's network through a single point of interconnection, and have the ability to establish additional POIs in a LATA at any technically feasible location. The federal Communications Act permits Level 3 to establish a single point of interconnection within a LATA for the hand off of SBC traffic to Level 3 and forbids SBC from charging for anything other than the one time costs of establishing such interconnection.

SBC Position:

32. SBC seeks to impose an obligation on Level 3 to establish a point of interconnection within each exchange, significantly increasing Level 3's cost in creating interconnection points.

Basis for Level 3's Position:

33. The Act permits Level 3 to select a single interconnection point per LATA and requires SBC to deliver traffic originating on its network to that interconnection point at no charge to Level 3, which service Level 3 similarly provides to SBC.[14] In addition, these statutes and rules require SBC to pay reciprocal compensation to Level 3 for the transport of SBC's originating traffic irrespective of the locations of the POI between SBC and Level 3 or of Level 3's terminating switch. Section 251(b)(5) requires that carriers establish reciprocal compensation arrangements and Section 252(d)(2) states that the agreement shall "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the network facilities of the other carrier." Further, 47 C.F.R. § 51.703(a) requires carriers to establish reciprocal compensation for the transport of traffic originating on their networks, and does not provide any exceptions with respect to the location of the POI or the location of the terminating carrier's switch. SBC's

[14] 47 USC §§ 251(b)(5), (c)(2) & 252(d)(2); 47 CFR §§ 51.701 & 51.703.

contract proposal would enable it to escape its obligation to pay the transport portion of reciprocal compensation to Level 3 in the circumstances defined by SBC's proposal.[15]

34. Five Federal Circuit Courts of Appeals[16] have upheld the FCC's "rules of the road" for interconnection. Similarly, state public service commissions have held that SBC may not impose an obligation to impose more than a single point of interconnection. In a recent Illinois Arbitration Order[17], the Illinois Commerce Commission held that a CLEC may elect to interconnect with SBC's network using a single POI or using multiple POIs, pursuant to Section 251 of the Act.

[15] *See, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996,* CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499, at ¶¶ 1042, 1062 (1996) ("*Local Competition Order*"); *Application by SBC Communications, Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶ 78 (rel Jun 30, 2000) ("*Texas 271*"); *TSR Wireless, LLC et al v U S West Communications, Inc, et al*, File Nos. E-98-13, E-98-15, E-98-16, E-98-17, E-98-18, Memorandum Opinion and Order (rel Jun 21, 2000) (*"TSR Wireless"*), *aff'd, Qwest Corp et al v FCC et al*, 252 F3d 462 (DC Cir 2001); *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Notice of Proposed Rulemaking, FCC 01-132, at ¶¶ 72, 112 (rel Apr 27, 2001) ("*Intercarrier Compensation NPRM*"); *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc., and for Expedited Arbitration*, CC Docket No. 00-218, Memorandum Opinion and Order, at ¶ 52 (Wireline Comp. Bureau, rel Jul 17, 2002) ("*Federal Arbitration Order*").

[16] *MCI Telecomms Corp v. Bell Atl – Pa*., 271 F3d 491, 517 (3rd Cir 2001) (holding that a state commission may not require CLEC to interconnect at points other than the CLEC selected, technically feasible point, stating that to require otherwise "would be inconsistent with the policy behind the Act"); *US West Comms v MFS Intelenet, Inc*, 193 F3d 1112, 1124 (9th Cir 1999) (affirming lower court decision permitting single point of interconnection issued by the Nevada Commission); *Southwestern Bell Tel Co v Pub Utils Comm of Tex*, 348 F3d 482, 485 (5th Cir 2003) (affirming lower court grant of summary judgment that CLEC may choose any technically feasible point for interconnection and may not be charged for delivery of ILEC traffic to that POI); *Mountain Comms Inc v. FCC*, No. 02-1255 slip op at 10 (DC Cir Jan 16, 2004) (holding that FCC decision requiring CLEC to pay for transporting ILEC traffic to a single POI was arbitrary and capricious in that it directly contradicted, without explanation, prior FCC decision that ILEC could not charge for delivering traffic to single POI); *MCI Metro Access Transmission Servs., Inc. v. BellSouth Telecomms., Inc.*, No 03-1238 Slip Op at 14 (4th Cir 2003) (reversing lower court grant of summary judgment for ILEC, finding that district court erred in concluding that the ILEC could charge the CLEC for the cost of transporting local calls originating on the ILEC network, as FCC rules unequivocally prohibit such charges and allowed no exceptions);.

[17] *AT&T Communications of Illinois, Inc.*, Ill.C.C. Docket No 03-0239, 2003 WL 22518548 (Ill.C.C. (2003)).

35. A similar issue was raised in Level 3's Arbitration for an Interconnection Agreement with SBC in Michigan.[18] In that case, the Commission agreed with Level 3 and refused to require Level 3 to establish a POI in every local calling area in light of the Commission's similar holdings in other Arbitrations.[19]

TIER I
ISSUE TWO: Efficient Use of Interconnection Trunks for All Traffic.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Network Interconnection Methods, Sections 1.1, 2.4, and 2.7.

Interconnection Trunking Requirements, Sections 1.2, 3.2, 3.3, 3.4, 3.6, 4.2, 4.4, 4.4.1, 4.5, 5.2, 5.2.1, 5.2.2, 5.2.1 – 5.2.9, 5.3, 5.3.1.1, 5.3.3.1, 5.4.1, 5.4.2, 5.4.3, 5.4.1-5.4.4, 5.7.1, 5.7.2, 5.7.3, 5.7.4, 8.8.1, 12.1, 12.1.1-12.1.4, 12.2, 12.3, 12.4, and 13.1.

Out of Exchange, Sections 4.1, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 9.1, 9.2, 9.4, and 9.5.

Intercarrier Compensation, Section 3.1, 10.1, and 13.1.

<u>Statement of the Issue</u>:

Whether SBC can compel Level 3 to reconfigure the Level 3 network to create duplicative interconnecting trunking arrangements which would each carry different types of telecommunications traffic.

---

[18] *The Matter of the Petition of Level 3 Communications, LLC, for Arbitration Pursuant to Section 252 of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-12460, Opinion and Order, Oct. 24, 2000.

[19] *See*, *The Matter of the Petition of Coast to Coast Telecommunications, Inc, for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with Michigan Bell Telephone Company d/b/a Ameritech Michigan*, MPSC Case No. U-12382, Order Adopting Arbitrated Agreement, Aug 17, 2000; *The Matter of the Petition of MediaOne Telecommunications of Michigan, Inc, for Arbitration Pursuant to Section 252(b) of the Federal Telecommunications Act of 1996 to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-12198, Opinion and Order, Mar 3, 2000.

Level 3 Position:

36. Level 3 has constructed a nationwide advanced fiber optic backbone. Where it interconnects with incumbent LECs, such as SBC, Level 3 has constructed or paid for extensive co-carrier facilities capable of carrying all forms of traffic (*i.e.* interLATA, Local, and IntraLATA.) Level 3 asks that the Commission permit Level 3 to pass all forms of traffic over this network without having to construct an additional network for each type of call.

SBC Position:

37. SBC seeks to require Level 3 to establish separate trunk groups, one for local and IntraLATA traffic and a second for InterLATA traffic for the interconnection of traffic. SBC accomplishes this by refusing to allow multiple traffic types to flow across its interconnection trunks.

Basis for Level 3's Position:

38. Section 252(c)(2) of the Act requires SBC to provide interconnection to networks at 'any technically feasible point at 'rates, terms, and conditions that are just, reasonable, and nondiscriminatory.' Level 3, like other facilities-based carriers, provides for the common carriage of a mix of traffic (*i.e.* traffic that is rated according to legacy, geographically based compensation schemes as: interLATA, intraLATA toll, and local) that its customers originate and terminate, which traffic must be exchanged with SBC's network through Local Interconnection Trunk Groups. In order to serve these customers, Level 3 must also establish facilities to carry calls. Under the Level 3 and SBC Interconnection Agreement, Level 3 has built out its network relying on trunks that carry Level 3's mix of traffic. Level 3 adjusts the size and capacity on the amount of traffic that is exchanged between SBC and Level 3, and the parties

pay the appropriate compensation (reciprocal compensation for local and intraLATA and access compensation for interLATA) based on the measurement of the traffic exchanged.

39. For years, the FCC has allowed SBC to establish and use its network facilities to carry multi-jurisdictional traffic, and permitted carriers to interconnect with those network trunk facilities to complete calls. This has been true even though there has historically been different rates of compensation exchanged between carriers depending on whether the calls are deemed interstate or intrastate. The same is true of traffic delivered by a CLEC to an ILEC network.[20]

40. State Commissions that have addressed this issue, specifically found that "economic entry into the market requires that [CLECs] be permitted to use its existing trunks for all traffic whenever feasible."[21] Level 3's proposed Interconnection Agreement, consistent with this history, while also encouraging true facilities-based competition, permits Level 3 to rely on existing network interconnection configurations (built and established under the existing SBC Interconnection Agreement) to exchange Level 3's customers' traffic to SBC. State Commissions have held that the costs imposed on CLECs in the development of their interconnection plan are key considerations in defining the terms and conditions of an Interconnection Agreement.[22]

41. In contrast, SBC intends to impose on Level 3 an obligation to create interconnection trunks that can be exclusively used for either local, interLATA and intraLATA traffic. SBC refuses to allow multiple traffic types to flow across interconnection trunks. SBC's

---

[20] *See, e.g., In the Matter of Joint Application by BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina*, WC Docket No. 02 – 150, 17 FCC Rcd. 17,595, Memorandum Opinion and Order, FCC 02-260 ¶ 225-226 (rel. Sept. 18 2002).

[21] *In the Matter of the Application of Sprint Communications Company, L.P. for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-11203, Order Approving Arbitration Agreement with Modifications, Jan 15, 1997, pp. 4-5. *See also, US West Communications v. MFS Intelenet, Inc.*, 193 F3d 1112, 1124-25 (9th Cir 1999).

[22] *Re Southwestern Bell Telephone Company*, Tx PUC Docket No. 22315, Mar 14, 2001.

singular justification is to ensure access revenues. This justification, however, is completely without merit. Carriers nationwide, including SBC, have traditionally utilized percentage allocations to determine billing responsibility. Carriers, including Level 3, provide auditable records to verify these traffic percentages. SBC's ruse is further exposed by the fact that even where FGD trunks are employed, the parties may still allocate access revenues according to meet point billing percentages. When viewed in light of long accepted billing norms, SBC's proposal clearly shows no other justification than to impose an anticompetitive price squeeze on Level 3 by forcing Level 3 to create duplicative, redundant, and therefore, completely inefficient network configurations. SBC's proposed terms impair Level 3's ability to develop efficient and reliable network trunking arrangements.

42. Level 3 should have the ability to combine local and access traffic on the same facilities (i.e., multi-jurisdictional trunk groups), like SBC has for its own traffic, and pay SBC the appropriate compensation based upon verifiable records showing the appropriate jurisdiction of the traffic exchanged. SBC and Level 3 are able to measure the traffic exchanged between the parties and pay intercarrier compensation based on these measurements. If a circuit switched telephone call is appropriately rated as local based upon the CPN exchanged between the parties, then the originating party should and will pay the appropriate measure of local charges. Concomitantly, circuit switched calls that tariffs reveal are interLATA and/or interstate, should and will be compensated at the appropriate tariffed intrastate or interstate access rates.

TIER I
ISSUE THREE: Transit Traffic.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Interconnection Trunking Requirements, Sections 1.3, 3.2, 3.4, 4.3, 4.3.1 – 4.3.4, and 12.3.

Intercarrier Compensation, Section 4.6.

Out of Exchange, Sections 6.1, 6.2, and 6.3.

Statement of the Issue:

SBC refuses to provide for terms and conditions that would efficiently allow for SBC to interconnect Level 3's network and exchange traffic with the facilities of other carriers.

Level 3 Position:

43. Level 3's existing interconnection agreement provides that SBC will interconnect, for a fee, Level 3's traffic to other carriers. If a Level 3 customer attempts to complete a call that would terminate to a customer of a third party carrier (e.g. a rural LEC, CMRS provider, or another competitive local exchange carrier), SBC, like any other RBOC (or any other carrier permitting interconnected carriers to exchange traffic with carriers other than itself and the directly interconnected carrier) "transits" the traffic, at TELRIC rates, to the third party carrier or vice versa. This makes inherent sense for sound economic, technical, and policy reasons. At low volumes, none but a rate-regulated carrier operating under guaranteed rates of return can incur the costs of building such facilities. Should the dominant incumbent LEC be deregulated (which is the effect of SBC's proposal), then, at whim, it could require other carriers – either by imposing uneconomic rates or simply by fiat – to direct interconnect with all other carriers. The result would be massively underutilized capacity as each carrier built trunks to all other carriers. Technically it would choke physical and network capacity throughout. Ironically, this is exactly the reason Congress in 1934 required, among other things, regulation of telecommunications and non-discriminatory interconnection. Accordingly, for these abundantly reasonable, if not

axiomatic reasons, the Commission should compel SBC to transit calls from Level 3 to other carriers and vice versa according to the terms Level 3 provides.

SBC Position:

44. SBC does not wish to transit calls as part of the terms and conditions of a Section 251 Interconnection Agreement or, to the best of Level 3's knowledge, any other regulatory requirement, such as, Sections 201-5 of the Act or analogous state law. While SBC mentioned that it would provide a "private" commercial arrangement, none was ever provided in negotiations. Level 3 is left to conclude that, absent some "secret" arrangement, it will be required to establish a separate set of interconnection trunks (in addition to the trunks described in Issue 2) in order to deliver and receive traffic from third party carriers including the vast majority of the State's rural carriers, with whom – for obvious reasons – Level 3 has not established direct interconnection.

Basis for Level 3's Position:

45. Transit is the functional interconnection of traffic that is originated or terminated by a third party local service provider such as an Independent Phone Company (ICO) or a CLEC other than Level 3. These carriers provide telecommunications services within and without SBC operating areas. SBC has long since constructed interconnection trunks during a rate regulated era with these providers and exchanges traffic with them on a regular basis. Until now, SBC and Level 3 have cooperatively exchanged traffic with these smaller carriers according to accepted transiting practices. The Commission should recognize that SBC is obligated, as part of its obligations under state and federal law, as well as under this Interconnection Agreement with Level 3, to exchange traffic (at reasonable cost-based rates) between these other carriers and Level 3.

46. SBC has existing interconnection trunks to all of the carriers in its region. To match the ubiquitous SBC interconnection network, Level 3 and other carriers would need to establish a whole new set of interconnection trunk groups to exchange this traffic. However, Federal and state regulations, as well as simple network economics recognize that SBC can transit traffic among carriers over its ubiquitous network much more efficiently and economically than requiring competing carriers to establish interconnection trunk facilities to every other carrier.

47. If the Commission were to require separate trunk groups for transit traffic, it would be economically unfeasible for carriers to undertake the effort to exchange traffic among each other.

48. While the FCC has held that Sections 251 and 252 of the Act do not impose a specific obligation on an incumbent local exchange carrier, such as SBC, to transit traffic,[23] state Commissions adjudicating arbitration proceedings under Section 251 and 252, disagree.

49. The Michigan Commission has repeatedly held that "[SBC] must provide transit service upon request when technically feasible."[24] The basis for that Commission's decision is that:

> absent transiting, new competitors would face a significant barrier to entry due to their inability to simultaneously interconnect with

[23] *In the Matter of Petition of WorldCom, Inc. Pursuant to Section 252(E)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia, Inc. and for Expedited Arbitration*, CC Dkt No. 00-218, 17 FCC Rcd. 27039, Memorandum Opinion and Order (July 17, 2002.)

[24] *In the Matter of the Petition of Michigan Bell Telephone Company, d/b/a SBC Michigan, for Arbitration of Interconnection Rates, Terms, Conditions, and Related Arrangements with MCIMetro Access Transmission Services, LLC, Pursuant to Section 252(b) of the Telecommunications Act of 1996*, MPSC Case No. U-13758, Opinion and Order, Aug 18, 2003; *In the Matter of the Application of AT&T Communications of Michigan, Inc. and TCG Detroit for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Michigan pursuant to 47 USC 252(b)*, Case No. U-12465, Opinion and Order, Nov 20, 2000; *In the Matter of the Application of Sprint Communications Company, L.P. for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-11203, Order Approving Arbitration Agreement with Modifications, Jan 15, 1997.

> every other LEC. Further, given that an important purpose of the FTA is to encourage the development of competition in local exchange markets, the Commission is not persuaded that the FTA should be interpreted to allow Ameritech Michigan to refuse to perform transiting services. Indeed, nothing in the FTA suggests that Ameritech Michigan may refuse to resell any element, function, or group of elements and functions to AT&T for use in the transmission, routing, or other provision of the telecommunications service simply because a direct interconnection with AT&T and another telecommunications provider might obviate the necessity for Ameritech Michigan to perform transiting service. For a competitive marketplace to flourish, new entrants must be able to provide service to customers in an economically viable manner.[25]

50. More importantly, SBC has already agreed to transit traffic associated with other carriers as part of its current interconnection obligations. (*See, e.g.*, existing Level 3 – SBC Interconnection Agreement, Interconnection and Trunking Requirements, Section 4.) SBC has proffered no cognizable reason permitting it to unilaterally remove transiting from the ambit of state and federal requirements, much less any other additional reasonable technical or economic consideration for so doing and force such provisions into "secret" agreements. The Commission should adopt Level 3's proposed revisions, which are based upon the Parties' formerly mutually agreeable arrangements, and require SBC to Transit traffic.

[25] *In the Matter of the Petition of AT&T Communications of Michigan, Inc, for arbitration to establish an interconnection agreement with Ameritech Michigan*, MPSC Case Nos. U-11151, U-11152, Order Approving Agreement Adopted by Arbitration, Nov 26, 1996. *See also, In the Matter of the Application of Sprint Communications Company, LP for Arbitration to Establish an Interconnection Agreement with Ameritech Michigan*, MPSC Case No. U-11203, Order Approving Arbitration Agreement with Modifications, Jan 15, 1997.

TIER I
ISSUE FOUR: Defining "Local Call."

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

General Terms and Conditions, 1.72.

Interconnection Trunking Requirements, Sections 5.4.3, and 12.2.

Intercarrier Compensation, Sections 3.5, 4.7, 4.7.1, 4.7.2, 4.7.2.1, 5.1.1-5.1.2.2.1, 7.1, 7.2, 8.1, 8.2, 8.3, 8.4, 10.1, and 12.6.

Unbundled Network Elements, Section 2.19.4.

<u>Statement of the Issue</u>:

Whether the definition of "local call" should be determined based on the NPA-NXX configurations relied upon by the industry to exchange traffic, or the unknown physical location of the customers.

<u>Level 3 Position:</u>

51. SBC and Level 3 have agreed to define Local Calls (for non-ISP bound traffic) as those calls that are routed, based on the NPA-NXX of the calling and called parties. In the parties' existing interconnection agreement, and according to the 2nd Amendment, a local call is a call that originates and terminates within the same wire center, as determined by the NPA-NXX of the calling and called parties. Level 3 proposes to maintain this approach, and rely upon the NPA-NXX designations for purposes of defining local calls.

<u>SBC Position:</u>

52. SBC, notwithstanding the industry practices in relying upon the NPA-NXX routing codes to define a "Local Call," would instead attempt to define a "local call" (for reciprocal compensation purposes) based on the unknown geographic location of the originating and terminating caller.

Basis for Level 3's Position

53. Traditionally, local exchange carriers have relied on NPA-NXX codes associated with a person's telephone number to rate and route call traffic. Based on this routing convention, local calls, for purposes of applying the local exchange carriers' rates and tariffs, were defined as calls that originated and terminated to wire centers that shared common sets of NPA-NXX codes as defined by tariff. Switches within a local calling area route calls based upon routing tables that show which numbers are associated with the local calling area and which numbers are not. Switches automatically update these tables using the Local Exchange Routing Guide ("LERG") many times a day. Call recording equipment located in SBC's switches capture the originating and terminating NPA-NXX codes (and other data) for each and every call exchanged. This information is passed to regional billing centers where SBC checks against LERG tables to determine V & H coordinates, as well as against SBC's own tariffs to determine how each call should be rated. The physical location of the end user is irrelevant to this determination. As a matter of course, local calling areas as well as LATA boundaries routinely change, such that, for example, a caller who never changes his/her physical location, can, by stroke of the pen, find him/herself in another calling area and/or LATA.

54. The Act and FCC decisions require that the jurisdiction of the traffic be determined by the origination and termination points of the call. In other words, if the call originates and terminates within the SBC defined local calling area (including mandatory EAS) the call is local and not subject to access charges. In the alternative, if the call originates in one local calling area and terminates in a different local calling area, the call is not local and would be subject to the appropriate access charges. SBC's approach to defining a "local call" would be difficult, if not impossible to enforce. SBC would have the parties define a call on the basis of

the mileage between the location of the originating caller and terminating caller, while using SBC's own local definition as the governing definition of the local area for purposes of the Interconnection Agreement. It is unclear how the parties would identify the originating or terminating location calls if they had to refer to the physical location of the end user. For example, if an end user located near a local calling area boundary had a particularly long phone cord, or cordless phone, that end user might cross the boundary during the course of the call, or some portion of the call, thus making that call or a portion of that call intraLATA or interLATA toll (or interstate toll for that matter). The parties would have no way of determining this, nor can SBC (or anyone else for that matter). Moreover, when this requirement is read in combination with SBC's proposed requirement that traffic be segregated on trunks according to its jurisdiction, the Parties would have to route this call on and off of FGD trunks during the duration of the call. While this is an extreme example, it is both possible and highly illustrative of the questionable nature of SBC's proposed contract changes.

55. The FCC has held that "industry practice among local exchange carriers . . . appears to have been that calls are designated as either local or toll by comparing the [phone numbers] of the calling and called parties"[26] This Commission should adopt this practice for purposes of defining the terms and conditions of the parties' Interconnection Agreement.

[26] *Starpower Communications v Verizon South*, EB- 00-MD-19, Memorandum Opinion and Order, ¶ 17, 8 FCC Rcd. 23,265 (Nov. 7 2003).

TIER I
ISSUE FIVE: Unbundled Network Elements.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Unbundled Network Elements, Sections 2.3, 2.10, 3.3.1 and subsections, 2.12 and subsections, and 2.15 and subsections.

<u>Statement of the Issue</u>:

Whether SBC must comply with state and federal requirements that prohibit SBC from unilaterally withdrawing or restricting the availability of unbundled network elements.

<u>Level 3 Position:</u>

56. Level 3 has a statutory right to obtain unbundled network elements from SBC pursuant to Section 251 of the Act,[27] and state law. Level 3 requests that the Commission continue to require that SBC provide access to UNEs according to the law rather than SBC's whim. Thus, Level 3 requests the Commission specifically reject any attempts by SBC to unilaterally (and self-servingly) determine whether and how a change of law operates with regard to UNEs and prevent SBC from flash cutting to retail rates or refusing to provide UNEs altogether based upon SBC's view of the state of federal law.

57. Secondly, with regard to the FCC's TRO itself, Level 3 has proposed terms and conditions that closely, if not exactly track the FCC's Order.[28] Accordingly, so long as Level 3 is providing a qualifying service, SBC should be precluded from interfering with Level 3's provision of any other service, whether qualifying or non-qualifying; once Level 3 has obtained

---

[27] 47 USC § 251.

[28] *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, FCC Docket No. 01-388, *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 03-36, Adopted, Feb 20, 2003, Released, August 21, 2003, Rules Promulgated, 68 Fed Reg 52,276, Sept 2, 2003 ("*Triennial Review Order*").

access to a UNE to provide a qualifying service, Level 3 is permitted to use that UNE to provide any additional services, including non-qualifying telecommunications and information services.

SBC Position:

58. SBC proposes to grant itself the ability to unilaterally terminate the availability of network elements, regardless of state or federal law. In addition, SBC would restrict the ability of Level 3 to use network elements to serve its customers that purchase more than one type of service from Level 3. SBC would prohibit Level 3 from providing any non-telecommunication service to an end user that Level 3 serves using unbundled network elements.

Basis for Level 3's Position

59. SBC places limitations on UNEs and UNE combinations that restrict Level 3's use of UNEs in general and UNE combinations in particular. The language in many of the restrictions are vague, such that the terms could be relied upon by SBC to unilaterally assert that SBC is no longer required to provide access to UNE and UNE combinations.

60. One restriction that SBC seeks to impose is the requirement that Level 3 use UNE's only for "qualified services."[29] SBC prohibits Level 3 from using network elements where there is a nonqualifying service being provided at any time to an end user that Level 3 serves, even though Level 3 relies, upon UNEs to also provide that customer other qualifying services. SBC also prohibits Level 3 from relying on any UNE to provide a qualifying services if Level 3 simultaneous provides a non-qualifying service. SBC's proposed language would give SBC the discretion to unilaterally convert Level 3's network elements to 'wholesale services' purchased at non-cost based prices. Level 3 knows of no legal authority supporting SBC's position.

[29] *Id* at ¶ 100.

TIER I
ISSUE SIX: Using Interconnection Facilities for Internet Enabled Traffic.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Interconnection Trunking Appendix, Section 13.1.

Intercarrier Compensation, Sections 3.1, 4.2, 4.5, 4.7-4.7.2.1, 7.1, 7.2, 16.1, and 17.1,

<u>Statement of the Issue</u>:

Whether SBC may prohibit Level 3 from utilizing local interconnection facilities to terminate Internet-enabled traffic.

<u>Level 3 Position:</u>

61. Level 3 seeks use the interconnection network it has constructed and additional facilities it may construct in the future to exchange Internet-enabled traffic (including Voice embedded IP communications) between its network and SBC's. Level 3's 16,000 route-mile network within the continental United States is optimized to provide advanced telecommunications and enhanced services.[30] Level 3's network also extends to Europe and is connected with international routes worldwide. Level 3 also designed its facilities to permit connections to the PSTN. Thus, Level 3 requires the ability to interconnect with SBC for a variety of Internet-enabled signals.

---

[30] Level 3's name evokes the fact that Level 3's network is uniquely designed and operated on an end-to-end basis to optimize the end user customer's ability to fully exploit the benefits of IP technology. More specifically, the name itself "Level 3" refers to the fact that Level 3 provides the three essential building blocks of a fully optimized facilities-based network capable of leveraging all of the benefits of Internet enable technologies have to offer. At the physical level ("level 1) Level 3 constructed a 16,000 mile fiber optic backbone within the continental United States. Level 3 has also constructed 2 undersea cables connecting the U.S. network to its approximately 9,000 route mile network in Europe. Level 3 amplifies signals traveling within its network every 60 miles and reconstitutes, reconfigures and regenerates signals every 240 miles to ensure the highest quality transmission with the lowest possible degradation in service. Level 3 also provides interconnection and collocation services at Level 3 gateway facilities nationwide. At the data level ("level 2") Level 3 provides the most advanced network capabilities to permit other carriers and end user customers to exchange vast quantities of traffic every day. At the network level ("level 3") Level 3 has optimized the entire network to seamlessly and transparently permit carrier customers and end users the ability to leverage the full benefits of the IP family of protocols unfettered by constraints imposed by circuit switched or other older technologies.

SBC Position:

62. SBC's position is that regardless of whether Internet-enabled traffic is an information or telecommunications service, if it originates in one LATA and terminates in another, it is subject to access charges. SBC also attempts to illegally limit the availability of UNEs for use with Internet-enabled traffic.

Basis for Level 3's Position:

63. SBC ignores federal law and seeks to impose access charges upon carriers such as Level 3 who provide interconnection services for enhanced service providers ("ESPs") applications such as Voice embedded IP services. Moreover, this traffic is the subject of ongoing rulemaking proceedings at the FCC[31] as well as recent FCC orders.[32] The FCC has repeatedly determined that for sound public policy reasons, such as to promote the growth of the Internet and to retain a deregulatory environment in which Internet enabled services can flourish, ESPs are treated as end users.[33] ILEC access tariffs do not, by their terms, apply to these customers, nor can they. Thus, ILECs cannot legally charge these customers minute sensitive access charges. Therefore, for purposes of intercarrier compensation, Level 3's ESP customers

---

[31] *See, e.g., Level 3 Communications, LLC Petition for Forbearance Under 47 USC § 160(c) and Section 1.53 of the Commission's Rules from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b),* WC Docket No 03-266 (filed Dec 23 2003) ("*Level 3 Petition*"); *Vonage Petition for a Declaratory Ruling*, WC Docket No 03-211 (filed Oct 27, 2003) ("*Vonage Petition*"); *In the Matter of IP-Enabled Services*, Notice of Proposed Rulemaking, WC Docket No. 04-36 (rel Mar 10, 2004) ("*Voice-enabled Services NPRM*").

[32] *In the Matter of Petition for Declaratory Ruling that pulver.com's Free World Dialup is Neither Telecommunications Nor a Telecommunications Service*, WC Docket No. 03-45, Memorandum Opinion and Order, FCC 04-27 (rel Feb 19, 2004) ("Pulver Order"); *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, FCC 04-97 (rel Apr 21, 2004) ("*AT&T Order*").

[33] *MTS and WATS Market Structure*, 97 FCC 2d 682, ¶¶ 77-8, 83 (1983), *aff'd in principal part and remanded in part, National Ass'n of Regulatory Util Comm'rs v FCC,* 737 F.2d 1095 (DC Cir 1984); *WATS Related and Other Amendments of Part 69 of the Commission's Rules*, 64 RR 2d 503, 3 FCC Rcd 496, ¶ 10 (1988); *Access Charge Reform, First Report and Order*, 12 FCC Rcd. 15982, ¶ 342 (1997) (affirming that "ISPs may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries.") (emphasis supplied), *aff'd*, *Southwestern Bell Tel Co v. FCC,* 153 F3d 523 (8th Cir 1998); *Intercarrier Compensation NPRM* at ¶ 6 ("long-distance calls handled by ISPs using IP telephony are generally exempt from access charges under the enhanced service provider (ESP) exemption"); 47 CFR § 69.5(b) (requiring payment of interstate access charges by "interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign telecommunications services.") (emphasis supplied).

must be treated like any other business customer of local services and the carriers exchange reciprocal compensation according to Section 251(b) of the Act[34] and the Section 51.701 of the FCC's Rules,[35] and related FCC Orders.

TIER I
ISSUE SEVEN: Intercarrier (Reciprocal) Compensation.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

Intercarrier Compensation, Sections 3.1, 3.6, 3.7, 4.7- 4.7.2.1, 5.1, 5.1.1-5.1.2.2.1, 7.1, 7.2, 12.1-12.6, 12.9, 13.1, 14.1, 15.1, 15.2, 15.3, 15.4, 16.1, and 17.1,

<u>Statement of the Issue</u>:

Whether SBC can impose the access charge regime on information services traffic.

<u>Level 3 Position:</u>

64. Level 3 requests that the Commission follow federal law on the treatment of intercarrier compensation for information services.

<u>SBC Position:</u>

65. There are two components to SBC's position. First, SBC asserts that it is permitted to assess non-cost based access charges to Level 3 for the interconnection of information services. In addition, SBC asserts that it is permitted to deny reciprocal compensation for foreign-exchange type traffic.

<u>Basis for Level 3's Position:</u>

66. With respect to reciprocal compensation obligations, Section 251(b)(5) of the Act imposes on each local exchange carrier ("LEC") "the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[36]

---

[34] 47 USC § 251(b).

[35] 47 CFR § 51.701.

67. As the FCC ruled in the *ISP Compensation Order,* all telecommunications traffic is subject to reciprocal compensation arrangements unless it falls within the exemptions established by Section 251(g) of the Act (47 U.S.C. §251(g)). Level 3's contract language is consistent with the Act and related precedent. SBC, however, has proposed language for a number of provisions of the Appendix relating to Intercarrier Compensation (Including Reciprocal Compensation) that will have the effect of enabling SBC to avoid its obligation under law to provide compensation to Level 3 for terminating local traffic originating with an SBC retail customer, while preserving SBC's ability to receive compensation from Level 3 for terminating local traffic originating with a LEVEL 3 retail customer.

68. In the *ISP Remand Order,*[37] the FCC stated that ISP-bound traffic fell within the Section 251(g) carve out. This finding, however, was rejected by the D.C. Circuit Court of Appeals which held that the FCC could not subject ISP-bound traffic to the Section 251(g) carve out because that section preserved certain compensation mechanisms that were in effect when Congress enacted the Act.[38] The Court noted that even the FCC acknowledged that there had been no pre-Act obligations relating to intercarrier compensation for ISP-bound traffic. However, concluding that the FCC's analysis of Section 251(g) was erroneous, the Court declined to vacate the *Order* which requires all local telecommunications traffic not "carved out" by Section 251(g) of the Act to be subject to reciprocal compensation. SBC's contract language proposals, which would provide for numerous exceptions to SBC's reciprocal compensation obligations, limit the type of traffic subject to compensation and selectively use the reciprocal compensation regime that the FCC sought to eliminate in the *ISP Remand Order:*

---

[36] 47 U.S.C. § 251(b)(5).

[37] *In the Matter of Compensation for ISP-Bound Traffic*, Order on Remand, FCC 01-0131 (April 27, 2001.)

[38] *WorldCom, Inc. v. FCC*, 288 F3d 429 (DC Cir 2002).

> It would be unwise as a policy matter, and patently unfair, to allow incumbent LECs to benefit from reduced intercarrier compensation rates for ISP-bound traffic with respect to which they are net payors, while permitting them to exchange traffic at state reciprocal compensation rates, which are much higher than the caps we adopt here, when the traffic imbalance is reversed. Because we are concerned about the superior bargaining power of incumbent LECs, we will not allow them to "pick and choose" intercarrier compensation regimes, depending on the nature of the traffic exchanged with another carrier. The rate caps for ISP-bound traffic that we adopt here apply *only* if an incumbent LEC offers to exchange all traffic subject to 251(b)(5) at the same rate.[39]

69. With respect to network interconnection issues, SBC has proposed language in Appendix 4 (Transmission and Routing of Telephone Exchange Service pursuant to Section 251(c)(2) of the Act) that is designed to shift to Level 3 a significant part of SBC's financial responsibility for transporting it originating traffic to Level 3's network, contrary to the FCC's rules. Section 51.703(b) of the FCC's rules,[40] provides than a LEC may not assess charges on any other telecommunications carrier for local telecommunications traffic that originates on the LEC's network.

70. The FCC in the *ISP Remand Order* asserted exclusive jurisdiction over compensation issues related to ISP-bound traffic[41] and determined that traffic to ISPs was excluded from the reciprocal compensation requirements of Section 251(b)(5) of the Act[42] by operation of Section 251(g) of the Act.[43]

---

[39] *ISP Remand Order***,** ¶ 789 [emphasis in original.]

[40] 47 CFR § 51.703(b),

[41] As noted above, although the U. S. Court of Appeals for the D.C. Circuit remanded the *ISP Remand Order* to the FCC for further consideration, the Court did not vacate the Order, leaving the federal compensation regime in place while the FCC deliberates the issue once again. . Accordingly, even though the legal rationale supporting the basis for the FCC to promulgate its federal compensation regime has been rejected, the federal compensation regime itself remains intact and applies in this case.

[42] 47 USC § 251(b)(5).

[43] 47 USC § 251(g); *ISP Remand Order,* at ¶ 46. This aspect of the *ISP Remand Order* was rejected by the D.C. Circuit. *WorldCom, Inc. v. FCC*, 288 F3d 429 (DC Cir 2002).

71. State Commissions have recognized that the *ISP Remand Order* has effectively preempted Commission jurisdiction to address compensation issues for ISP bound traffic. The Florida Public Service Commission, for example, determined that "[t]he FCC's intent to preempt a state commission's authority to address reciprocal compensation for ISP bound traffic is clear.[44]

72. According to the FCC's regime, therefore, all calls within a LATA should be treated as "local." Access charges do not apply. However, according to the language proposed by SBC, if the modem bank is within a particular LATA and the call terminates in that LATA, the call is interstate and the FCC has preempted the Commission's jurisdiction to set compensation. Yet SBC would also contend that if the modem bank is physically located outside of the LATA to which the ISP's telephone number is assigned, the call is intrastate and the Commission has jurisdiction to impose bill and keep. SBC is wrong on both assertions. The FCC does *not* distinguish between "local" ISP-bound traffic and "non-local" ISP-bound traffic. In fact, the FCC repudiated its earlier distinction between "local" and "non-local" for all traffic:

> This analysis differs from our analysis in the *Local Competition Order*, in which we attempted to describe the universe of traffic that falls within subsection [251](b)(5) as all "local" traffic. We also refrain from generally describing traffic as "local" traffic because the term "local," not being a statutorily defined category, is particularly susceptible to varying meanings, and significantly, is not a term used in section 251(b)(5) or section 251(g).[45]

73. Instead, the *ISP Remand Order* makes clear that the new federal regime applies to *all* ISP-bound traffic: "We conclude that this definition of 'information access' was meant to include *all access traffic* that was routed by a LEC 'to or from' providers of information

---

44 *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunication's Act of 1996,* Docket No. 000075-TP, Order Approving Stipulation, Phase I, Order No. PSC-02-0634-AS-TP (Florida PSC May 7, 2002).

[45] *ISP Rema*nd Order, at ¶ 34.

services, of which ISPs are a subset."[46] Nowhere does the *Order* limit its regime to "local" ISP-bound traffic.

74. The FCC was fully aware that CLECs were using foreign exchange-like ("FX-like") arrangements to serve ISPs long before the *ISP Remand Order* was released. Several carriers—both ILECs and CLECs, including Level 3—asked the FCC to include FX-like traffic within the scope of the order.[47] Several state commissions have recognized that the *ISP Remand Order* addressed all ISP-bound traffic, including traffic to ISPs that do not have a modem bank in the LATA and use FX-like arrangements.[48] An Arbitration Panel of the Texas Public Utility Commission has also considered the issue, and specifically addressed a position similar to the one taken by SBC in this proceeding. The Texas Arbitrators rejected the argument that "the ISP

46 *ISP Remand Order*, at ¶ 44 (emphasis added).

47 *See ex parte* filings in FCC CC Docket No. 99-68: Letter dated March 28, 2001 from Gary L. Phillips, SBC Telecommunications, Inc., to Dorothy Attwood, Chief, Common Carrier Bureau, Federal Communications Commission, at 3; Letter dated March 7, 2001 from Susanne Guyer, Verizon, to Dorothy Attwood, at 2-3; Letter dated December 13, 2000 from John T. Nakahata, Counsel to Level 3 Communications, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 1.

[48] *See Essex Telecom, Inc v. Gallatin River Comm*, L.L.C., Docket No. 01-0427, Order, at 8 (Ill. C.C. July 24, 2002) ("with the adoption of the ISP Remand Order, the Commission has been divested of jurisdiction to determine compensation issues as they relate to ISP bound calls."); *accord*, *Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Pacific Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, A.01-11-045, A.01-12-026, Opinion Adopting Final Arbitrator's Report With Modification (Cal. PUC July 5, 2002); *Investigation as to Whether Certain Calls are Local*, DT 00-223, *Independent Telephone Companies and Competitive Local Exchange Carriers – Local Calling Areas*, DT 00-054, Final Order, Order No. 24,080 (NH PUC Oct. 28, 2002); *Level 3 Communications, LLC Petition for Arbitration Pursuant to 47 USC Section 252 of Interconnection Rates, Terms, and Conditions*, Docket No. 05-MA-130, Order Approving an Interconnection Agreement, at 8-9 (Wisc. P.S.C. Feb. 13, 2003); *Petition for Arbitration of an Interconnection Agreement Between Level 3 Communications, LLC and CenturyTel of Washington, Inc*, Docket No. UT-023043, Seventh Supplemental Order: Affirming Arbitrator's Report and Decision, at 2-4 (Wash. U.T.C. Feb. 27, 2003); *Investigation into the Use of Virtual NPA/NXX Calling Patterns*, UM 1058, Order (Ore. PUC May 27, 2003), rehearing denied, Order (Ore. PUC Sep. 16, 2003); *Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms, and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, Arbitration Award, at 9 (PUC Ohio Oct. 4, 2001) ("The Commission agrees . . . that all calls to FX/virtual NXX [numbers] that are also ISP-bound are subject to the inter-carrier compensation regime set forth in the ISP Remand Order."); *Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Sprint*, Case Nos. 01-2811-TP-ARB, 01-3096-TP-ARB (PUC Ohio May 9, 2002); *DPUC Investigation of the Payment of Mutual Compensation for Local Calls Carried Over Foreign Exchange Service Facilities*, Dkt. No. 01-01-29, at 41-2 (Conn. DPUC Jan. 30, 2002) ("intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, the Department has been preempted from addressing the issue beyond the effective date of the ISP Order [June 14, 2001].").

Remand Order does not apply to all types of ISP-bound traffic, but only to ISP traffic that originates and terminates in the same local calling area."[49] Because the FCC had said ISP-bound traffic was subject to Section 251(g) rather than Section 251(b)(5), all compensation for it was governed by the FCC's rules adopted under its Section 201 authority.[50] The Florida Commission also issued a decision regarding this issue stating that "due to the FCC's recent *ISP Remand Order*, which removes ISP-bound traffic from state jurisdiction, this issue is limited to intercarrier compensation arrangements for traffic that is delivered to non-ISP customers."[51]

75. The Michigan Commission has found that the *ISP Remand Order* "takes care of all ISP traffic," and was "not moved to reverse its prior orders" regarding intercarrier compensation for non-ISP FX-like traffic..[52]

60. Because the FCC has exclusive jurisdiction over locally-dialed calls to ISPs, regardless of whether the ISP has equipment in the LATA and is served through an FX-like arrangement, the Commission should adopt Level 3's position and apply the FCC's interim compensation regime to all locally-dialed ISP-bound traffic.

[49] *Consolidated Complaints and Requests for Post-Interconnection Dispute Resolution Regarding Intercarrier Compensation for "FX-Type" Traffic Against Southwestern Bell Telephone Company*, TX PUC Docket No. 241015, Revised Arbitration Award, 31, Aug. 28, 2002.

[50] *Id*.

[51] *Investigation into appropriate methods to compensate carriers for exchange of traffic subject to Section 251 of the Telecommunications Act of 1996, Docket No. 000075-TP, Order on Reciprocal Compensation, Phases II and IIA*, Order No. PSC-02-1248-FOF-TP, 26 (Fla. PSC Sept. 10, 2002).

[52] *In the Matter of the Petition for Arbitration to Establish an Interconnection Agreement Between TDS Metrocom, Inc and Ameritech Michigan*, MPSC Case No. U-12952, Opinion and Order, Sept 7, 2001.

B. TIER II ISSUES.

TIER II[53]
ISSUE TEN: Liability for Hazardous Substances and Environmental Hazards Introduced by SBC or Third Parties.

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

General Terms and Conditions, Section 32.

<u>Statement of the Issue:</u>

Liability for Hazardous Substances and Environmental Hazards Introduced by SBC or Third Parties.

76. Section 32.1 of the General Terms and Conditions of the Proposed Interconnection Agreement contains language that imposes liability on Level 3 for hazardous waste contributed by Level 3 at SBC's central offices. Level 3 has no objection to this term. However, Level 3 should not be liable for removal, treatment, transport, disposal and remediation of hazardous substances and environmental hazards at SBC work sites including, but not limited to central offices where Level 3 is collocated if the hazardous substances or environmental hazards were introduced before, during or after Level 3's occupation of collocation space at the work site by SBC or a third party unrelated to Level 3. It is commercially unreasonable for SBC to attempt to hold Level 3 liable for removal, treatment, transport, disposal, remediation, excavation, storage, and other legal disposition or management of hazardous substances or environmental hazards that SBC itself or a third party with no contractual or other relationship to Level 3 introduces to an SBC work site before, during or after Level 3's occupation of collocation space, access to a right-of-way, pole or conduit.

[53] Numbers for Issues 8 and 9 were held in reserve and are intentionally left blank.

Specifically, Level 3 proposes the parties existing agreement be revised by adding language to Section 32.1 that would clarify Level 3's obligation.

77. Under Level 3's language, Level 3 is responsible for hazardous substances and environmental hazards that Level 3 or its authorized contractors introduce to an affected site. Only when Level 3 or an authorized contractor acting on its behalf introduces hazardous substances or environmental hazards to a site would Level 3 be the cost causer of related remediation, management and disposition expenses. SBC has proposed one-sided and unreasonable language would hold Level 3 liable for remediation and management of hazardous substances and environmental hazards that Level 3 had nothing to do with. Level's proposed language allocates responsibility by causation. Under SBC's proposed language Level 3 would be responsible for expenses relating to "all Hazardous Substances and Environmental Hazards introduced to the affected location" even if the Hazardous Substances and Environmental Hazards were introduced to the work site by SBC itself, SBC's contractors, or third parties with no contractual or other relationship to Level 3, and even if these hazardous materials were introduced before Level 3 became collocated at the central office. SBC's language contains no limitation as to time or causality. As a result, under SBC's proposed language, Level 3 is forced to assume liability for any contamination and subsequent remediation of any SBC property where Level 3 has collocated telecommunications equipment or otherwise established a physical presence (such as blowing fiber optic cable through an SBC conduit, or perhaps even leasing an SBC unbundled network element). SBC attempts to have Level 3 assume liability for remediation and other expense relating to Hazardous Substances and Environmental Hazardous that were introduced by SBC, its predecessors in interest, its contractors, or even unrelated third

parties years or even decades before, during or after Level 3 has leased collocation space or otherwise somehow "occupied" the affected SBC work site.

78. Other state commissions that have examined the issue have adopted Level 3's proposed position. For example, the Public Service Commission of Missouri in a Section 252(b) arbitration rejected language proposed by SBC because SBC's proposed language "would allow [SBC] to sue [the CLEC] for damages due to hazards introduced at a work site by a third party rather than suing the responsible third party."[54]

TIER II
ISSUE ELEVEN: NonPayment and Procedures for Disconnection.

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions §§ 8.8.1, 9.2, 9.3, 9.5, 9.6, and 9.7

Statement of the Issue:

NonPayment and Procedures for Disconnection.

79. The Interconnection Agreement should make clear that neither party can unilaterally terminate services provided pursuant to the agreement without first following all of the applicable contractual and legal requirements with respect to discontinuance of services. SBC has proposed terms that would allow it to terminate services provided under the agreement whenever Level 3 fails to pay charges that SBC believes are owed. Furthermore, SBC wants that ability to extend throughout its thirteen state regions to which Level 3 has already stated its objections.

80. The Commission should reject SBC's proposed terms, and adopt Level 3's more reasonable terms. Termination of services provided under the agreement for nonpayment is a

[54] *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Compulsory Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company*, Case No. TO-8-115, 1997 Mo. PSC LEXIS 138, 7 Mo PSC 3d 54, at *56 (1997).

drastic measure that can have significant impact on customers and end users. As such, termination, at a bare minimum, should occur only after a party has not paid money that it either agrees it owes (*i.e.*, that is not subject to dispute resolution) or that a Commission or arbitrator has found it owes. However, in Level 3's experience, SBC has at times "denied" or ignored disputes – thereby claiming that the dispute resolution process is unilaterally closed – and then threatened termination of services for nonpayment. In light of these concerns, Level 3 believes it is critical for the new contract to contain safeguards against SBC's unilateral termination of services. This concern is acute in light of the fact that Level 3 is not in a market position to posses a reciprocal termination of service remedy. SBC as and dominant incumbent local exchange carrier may well be economically motivated to accelerate termination of services and avoid contractual provisions that do and should inhibit service e terminations. SBC's aggressiveness in this regard is patently apparent from SBC's recent actions. In a "UNEs" amendment SBC circulated to CLECs, including Level 3, on or about March 11, 2004 (and in contract language proposed to Level 3 on April 26, 2004) SBC requested that CLECs agree to contract changes permitting SBC the right to terminate UNE services should the CLEC fail to disconnect a UNE and transition UNE circuits to SBC tariffed services (to the extent SBC deems those services as "available" under its tariff) within 30 days of the date upon which the DC Circuit's Order in *USTA v. FCC*[55] takes effect. SBC also stated in the letter that parties not agreeing to its terms would face dispute resolution complaints within eight (8) days of the date that it filed the letter.

TIER II
TIER II, ISSUE TWELVE:

<u>Sections of the Proposed Interconnection Agreement Affected</u>:

---

[55] *United States Telecom Ass'n v. FCC,* 359 F3d 554 (DC Cir Mar. 2, 2004) ("USTA II").

General Terms and Conditions, Section 7.

Statement of the Issue:

Deposits

81. Throughout the Agreement, the parties acknowledge the different rights and obligations with respect to different states and jurisdictions, and the parties have specifically tailored their relationship in a way to recognize different regulatory and market factors in each of the 13 different states that SBC provides services to Level 3. Similarly, the payment terms and conditions, and specifically the terms by which SBC would be entitled to receive a security deposit or some other form of reasonable assurance of payment, should conform to the other terms of the agreement where the parties acknowledge these state distinctions. The dispute between Level 3 and SBC with respect to Section 7 relates to the terms and conditions under which SBC may demand that Level 3 provide a deposit. There are three central issues in this Section: a) when should a deposit be required; b) for which states is SBC entitled to receive a deposit; and c) can Level 3 dispute SBC's demand for a deposit.

82. Section 7 of the General Terms and Conditions governs the rights and responsibilities in the event that a party to the agreement fails to make timely payment. Level 3 proposes language that would require a deposit where Level 3 has substantially failed to comply with the requirements for disputing charges billed by SBC. SBC should not be permitted to demand a deposit (or to demand an increase for an existing deposit) unless there has been a significant and material change in a carrier's financial circumstances since the effective date of the amendment. Furthermore, Level 3 should not be required to provide a deposit where SBC has not itself complied with the relevant provisions of the interconnection agreement relating to presentation of invoices and dispute resolution.

83. SBC does not agree to use the effective date as the window for comparing creditworthiness. Furthermore, SBC objects to conditioning a deposit demand on there being a "significant and material" impairment in credit status. Finally, SBC objects to Level 3's proposal to require only "substantial" compliance with the billing terms, and to conditioning SBC's ability to require assurance of payment on its own substantial compliance with billing and dispute resolution clauses in the agreement.

84. Level 3's proposed terms are fair and reasonable to both parties. Level 3 is not objecting to SBC's demand to include assurance of payment provisions in the contract, but is only trying to define better the circumstances under which such assurance can be sought or increased. For example, it is unclear to Level 3 how SBC would measure a relative impairment in creditworthiness if the reference point for comparison is not defined. Moreover, Level 3's suggestion to add that a change in circumstances must be "significant and material" prior to assurance of payment being demanded is a narrow and reasonable limitation on SBC's ability to seek a deposit; for example, without such a limitation, SBC could conceivably take an unfavorable comment by one investment analyst (regardless of the basis for that report) as justification for demanding additional assurance. Finally, given the complicated nature of intercarrier billing, SBC should only be permitted to seek assurance of payment where Level 3 has failed to substantially comply with payment and dispute resolution requirements – and if such a condition is to be included in the contract at all, it should be reciprocal, such that SBC cannot demand assurance of payment unless it has likewise complied (substantially or entirely) with the corresponding requirements with respect to billing and dispute resolution.

TIER II
<u>TIER II, ISSUE THIRTEEN:</u>

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

General Terms and Conditions, Section 7.2.

<u>Statement of the Issue:</u>

Should Assurance of Payment Apply on a State-by-State Basis or Across the SBC 13-State Region?

85. The contract between the parties applies and is approved on a state-by-state basis. The bills and payments apply for services rendered on a state-by-state basis. SBC should not be permitted to request a deposit in all 13 states based upon a failure to timely pay an undisputed bill in any one state. Furthermore, the application of a region-wide remedy based upon a single or subset of state circumstances is contrary to the grant of state responsibility set out in section 253 of the Federal Communications Act.

86. SBC objects to limiting the assurance of payment requirements to a state-by-state basis. SBC has stated that since a carrier will file bankruptcy in all states where it does business, this requirement cannot be limited to a state-by-state consideration. Furthermore, SBC has stated that a carrier may try to "game" the state-by-state circumstance when there is reason for a carrier to not pay in one market but continue service with SBC in its other states.

87. The error in SBC's logic is clear from its explanation of its position. The assurance of payment provision applies to situations beyond bankruptcy – and in fact, contractual assurance of payment should have nothing at all do with bankruptcy, which is subject to its own set of laws governing relationships between debtors and creditors. Furthermore, nothing in Level 3's proposal to limit the assurance requirements to a state-by-state application would limit SBC from seeking assurance of payment in all 13 states simultaneously if the contract

requirements were triggered in each jurisdiction. Level 3's proposal would only make clear that where the contract requirements are triggered with respect to only one state – say, for example, Missouri – SBC could not then demand a separate deposit for Texas, Illinois, Michigan, California, Connecticut, etc. Indeed, as a matter of jurisdiction, the Commission should not approve an assurance provision that gives SBC the ability to recover deposits in Illinois based upon a single potential problem in Texas – and it should be concerned about a provision that would allow SBC to demand assurance of payment in Illinois based upon a problem arising in California or Connecticut. Accordingly, the Commission should approve Level 3's proposal for these contract sections.

TIER II[56]
ISSUE FIFTEEN: Should Level 3 be Permitted to Dispute a Demand for Assurance of Payment?

Sections of the Proposed Interconnection Agreement Affected:

General Terms and Conditions, Sections 7.8, & 7.8.1

Statement of the Issue:

Should Level 3 be Permitted to Dispute a Demand for Assurance of Payment?

88. Level 3 should have the right to dispute whether assurance of payment is required under the terms of the agreement. SBC should not be allowed to cease performing or providing service where such disputes arise.

89. SBC wants the ability to cease all performance under the agreement and to move to terminate the agreement if Level 3 disputes the requirement to furnish assurance of payment. Level 3 understands SBC's desire to obtain reasonable assurance of payment. SBC cannot be permitted, however, to cease unilaterally all performance under the contract where Level 3 raises

[56] The number for Issue 14 was held in reserve and is intentionally left blank.

a good faith, bona fide dispute with respect to a SBC demand for assurance of payment. If SBC were allowed to do so, it would effectively shut off Level 3's ability to compete at a moment's notice should Level 3 feel that a demand for assurance of payment was unwarranted. Indeed, under SBC's proposal, SBC could even shut Level 3 off over a dispute about the amount of a deposit – for example, if Level 3 thought the proper deposit amount was $25,000, and SBC thought it was $50,000, SBC could stop exchanging traffic with Level 3 and cease provisioning services to Level 3 until Level 3 tendered the disputed amount. SBC should not be given the unilateral right to override the dispute resolution provisions of the contract, and Level 3's position should therefore be adopted.

TIER II
ISSUE SIXTEEN: Should the Performance Measurements Appendix be included in the Interconnection Agreement?

Sections of the Proposed Interconnection Agreement Affected:

Entire Performance Measurements Appendix

Statement of the Issue:

Should the Performance Measurements Appendix be included in the Interconnection Agreement?

90. Over the course of the last year, SBC and Level 3 have negotiated the terms of a Performance Measurements Appendix that would incorporate by reference the Illinois performance standards established by this Commission with subsequent modifications and amendments and establish certain benchmarks related to the manner in which SBC meets its obligation to provide its services under the Agreement. In fact, the two Parties reached an accord on the language to that Appendix several months ago. Thus, at this time, in terms of the underlying language in the Appendix, the parties are in agreement and there are no disputes with the provisions contained in the Appendix.

91. However, after the terms of the Performance Agreement were finalized and in an attempt to not waste resources, the Parties agreed to withhold submission of the Performance Measurements Appendix for regulatory approval until negotiations were completed and an arbitration was initiated. At that time, the parties agreed to include the Performance Measurements Appendix in the arbitration as an undisputed item. Subsequent to that agreement and as a part of the negotiations leading up to this arbitration, SBC informed Level 3 that it no longer believes the Performance Measurements Appendix should be included in the interconnection agreement.

92. Upon information and belief, SBC believes it no longer is required to include performance measurements as part of an interconnection agreement under its interpretation of a court order in *CoServe Ltd. Liability Corp. v. Southwestern Bell Tel Co.*[57] SBC interprets the Court's holding in *CoServe* to indicate that SBC is not under any obligation to include non-Section 251 terms in its Section 251 and 252 interconnection agreements that it has not volunteered to provide. SBC interprets *CoServ* incorrectly. The Fifth Circuit specifically held that once two carriers choose to bring a non-Section 251 item into their interconnection negotiations, those items are subject to Section 252's compulsory arbitration requirements if the parties cannot reach agreement on the item.[58] Level 3 does not concede that performance measures are not required under Section 251, but regardless, because SBC initially agreed to negotiate, and did negotiate, the terms of Performance Measurements with Level 3, the fact that the parties cannot now reach agreement on those measurements means they are subject to arbitration by the Commission.

---

[57] 350 F3d 482 (5th Cir 2003). ("*CoServe*").

[58] *Coserve*, 350 F3d at 486-488.

93. Level 3 believes that submission of the Performance Measurements in this arbitration is appropriate. In any event, irrespective of the Court's finding in *CoServe*, SBC has already voluntarily agreed to adhere to the performance measurements when it reached agreement with Level 3 on the terms contained in the Performance Measurement Appendix, and is bound to comply with Commission-mandated standards in any event.

TIER II
ISSUE SEVENTEEN: Out of Exchange Appendix

Sections of the Proposed Interconnection Agreement Affected:

Out of Exchange Traffic Appendix, Section 2.3

Statement of the Issue:

Should the Interconnection Agreement include terms in the Out of Exchange Appendix that limits SBC's obligation to provide UNE, collocation and interconnection services pursuant to only federal law?

94. SBC-proposed language in the Out of Exchange Appendix, Section 2.3, is a lengthy recitation on SBC's view of the current state of law with respect to its obligation to provide services. The proposed language reads in its entirety:

> 2.3 The underlying Interconnection Agreement sets forth the terms and conditions pursuant to which **SBC-12STATE** agrees to provide CLEC with access to unbundled network elements (UNEs) under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act in **SBC-12STATE**'s incumbent local exchange areas for the provision of CLEC's Telecommunications Services. **The Parties acknowledge and agree that SBC-12STATE is only obligated to make available UNEs and access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act to CLEC in SBC-12STATE's incumbent local exchange areas. SBC-12STATE** has no obligation to provide such UNEs, Collocation, Interconnection and/or Resale to CLEC for the purposes of CLEC

> providing and/or extending service outside of **SBC-12STATE**'s incumbent local exchange areas. In addition, **SBC-12STATE** is not obligated to provision UNEs or to provide access to UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act and is not otherwise bound by any 251(c) obligations in geographic areas other than **SBC-12STATE**'s incumbent local exchange areas. Therefore, the Parties understand and agree that the rates, terms and conditions set forth in **SBC-12STATE**'s current Interconnection Agreement, and any associated provisions set forth elsewhere in CLEC's current Interconnection Agreement (including but not limited to the rates set forth in this Agreement associated with UNEs under Section 251(c)(3) of the Act, Collocation under Section 251(c)(6) of the Act, Interconnection under Section 251(c)(2) of the Act and/or Resale under Section 251(c)(4) of the Act), shall apply only to the Parties and be available to CLEC for provisioning telecommunication services within an **SBC-12STATE** incumbent local exchange area(s) in the State in which CLEC's current Interconnection Agreement with **SBC-12STATE** has been approved by the relevant state Commission and is in effect.

95. 85. SBC's proposed language specifically limits SBC's obligations to provide UNE and collocation services pursuant only to Section 251(c) of the Act.[59] SBC's proposed language expressly eschews any applicable state laws and commission orders relating to these issues. Thus, SBC-proposed language amounts to little more than an unnamed unilateral waiver of state unbundling, collocation and interconnection obligations, as well as of any Section 271 unbundling obligations arising under federal law. As such, Level 3 can not "acknowledge and agree" with SBC's interpretation of the current state of the law.

TIER II
ISSUE EIGHTEEN: Physical Collocation

Sections of the Proposed Interconnection Agreement Affected:

Entire Physical Collocation Appendix

[59] 47 USC § 251(c).

<u>Statement of the Issue:</u>

Appendix Physical Collocation.

96. In March 2004, SBC provided Level 3 with a draft appendix for Physical Collocation. However, the draft appendix contained numerous errors and omissions in the appendix that made it difficult, if not impossible to redline and return to SBC. On or around May 17, 2004, Level 3 delivered to SBC a proposed alternative Physical Collocation Appendix. This alternative Appendix was similar in form to Collocation appendices that SBC has used in the past, and is similar to the existing SBC-Level 3 Appendix. As of the date of the preparation of this Petition, SBC had not had the opportunity to advise Level 3 on which terms of that Appendix SBC would find acceptable, and which terms it would dispute.

97. Upon information and belief, Level 3 would anticipate that SBC would dispute Level 3's treatment of the following. First, Level 3 has proposed language that would replace the phrase "eligible structure" with "Premises". To Level 3's knowledge, the term "Eligible Structure" is not defined in any federal regulation or order related to Physical Collocation. However, Level 3's proposed use of the word "Premises" is defined at Section 51.5 of the FCC's Rules[60] and in the FCC *Collocation Remand Order*,[61] and is consistent with Section 251(c)(6) of the Act.[62]47 USC 251(c)(6). For these reasons, Level 3 proposed replacing SBC's phrase "Eligible Structure" with "Premises" throughout the Appendix. Level 3 believes that SBC opposes Level 3's modifications.

98. Second, SBC has proposed a definition for the term "Multifunctional Equipment" (Physical Collocation, Section 2.24), to which Level 3 objects because SBC's proposal rewrites

---

[60] 47 CFR § 51.5.

[61] *In The Matter Of Deployment Of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, 16 FCC Rcd. 15,435, *passim* (2001).

[62] 47 USC § 251(c)(6).

the FCC's definition located in Section 51.5 of the FCC's Rules.[63] In order to remain consistent with the FCC's regulations, Level 3 proposes modifying the term to be consistent with the FCC's definition. SBC opposes Level 3's modification.

84. Third, Level 3 believes that SBC should use its office space efficiently (see Physical Collocation Sections, 2.1, 2.10, 2.17, 2.26, 5.10), and should allow for reclamation of space for obsolete or unused equipment, and make that space available to CLECs for collocation. Upon information and belief, SBC opposes this proposal.

TIER II
ISSUE NINETEEN: Virtual Collocation.

Sections of the Proposed Interconnection Agreement Affected:

Entire Virtual Collocation Appendix

Statement of the Issue:

Appendix Virtual Collocation.

99. In March 2004, SBC provided Level 3 with a draft appendix for Virtual Collocation. However, the draft appendix contained numerous errors and omissions in the appendix that made it difficult, if not impossible to redline and return to SBC. On or about May 17, 2004, Level 3 delivered to SBC a proposed alternative Virtual Collocation Appendix. This alternative Appendix was similar in form to Collocation appendices that SBC has used in the past, and is similar to the existing SBC-Level 3 Appendix. As of the date of the preparation of this Petition, SBC had not had the opportunity to advise Level 3 on which terms of that Appendix SBC would find acceptable, and which terms it would dispute.

---

[63] 47 CFR § 51.5.

TIER II
ISSUE TWENTY: Coordinated Hot Cuts Appendix.

Sections of the Proposed Interconnection Agreement Affected:

Coordinated Hot Cuts, Sections 3.1, 3.2, 3.2.1, 3.2.1, 3.2.3, 3.2.4, 3.2.5

Statement of the Issue:

Coordinated Hot Cuts Appendix.

100. Level 3 proposes language that confirms SBC's obligation to provide Coordinated Hot Cuts at TELRIC-based rates as approved by the various state commissions. SBC refuses to acknowledge this obligation and, instead, refers to its federal tariff rates with no explanation as to whether those rates are TELRIC-based. In order to avoid the opportunity for gamesmanship, the Commission should clearly articulate that hot cuts must be rated based on TELRIC. SBC opposes Level 3's proposal.

C. TIER III ISSUES

101. The Tier III issues concern language within the agreement that requires modification so that the agreement is internally consistent, commercially reasonable, and in compliance with applicable laws. Level 3 does not believe that there is a significant degree of disagreement between the Parties as to these issues. Level 3 hopes and expects that the Parties will be able to resolve most of the Tier III issues through further negotiations prior to hearing. However, in order to preserve its rights, Level 3 provides a brief summary (with references to applicable contract sections in Appendix C) of each Party's position on the remaining issues. Level 3's proposed language and rationale is also highlighted in Level 3's Disputed Points List, attached hereto as Appendix B.

D. GENERAL TERMS AND CONDITIONS — TIER III ISSUES

TIER III — GT
ISSUE ONE: Term of Agreement

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

General Terms and Conditions, Section. 5.2

102. Level 3 proposes that the term of the agreement be 3 years. SBC has not provided a response.

TIER III — GT
ISSUE TWO: Intervening Law

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

General Terms and Conditions, Section 21

Clearinghouse Appendix, Section 9.1, 9.2.

Physical Collocation Appendix Section 15.1

Network Interconnection Methods Appendix, Section 5.1.

103. Level 3 proposes that the Intervening Law provisions contained in the various portions of the agreement be consolidated into one single Intervening Law section in the General Terms and Conditions. Level 3 believes that the Intervening Law provisions are adequately covered in the General Terms and Conditions Section 49. As such, SBC's separate Intervening Law provisions are duplicative and create confusion.

TIER III — GT
ISSUE THREE: Definitions

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Definitions from Interconnection Trunking Requirements, Sections 1.4-1.26, and 2.1-15

Recording Appendix Sections 2.1-2.20

SS7 Appendix Sections 1.1-1.24

Out of Exchange Appendix Sections 1.2-1.8

Coordinated Hot Cuts Appendix, Sections 1.2-1.9

Clearinghouse Appendix Sections 1.2-1.24, and 1.26-1.27

Physical Collocation Appendix, Sections 2.1-2.24, and 2.26-33

UNE Appendix Sections 1.2-1.24

Network Interconnection Methods Appendix Sections 1.2-1.24

Appendix SS7 Sections 1.2-1.24, 2.2.2, and 2.3.1.

104. Level 3 believes that repeating the same basic definitions in each appendix is wasteful and unnecessary since this is one single agreement being adopted. The definitions adopted would be generally applicable throughout the entire agreement. As such, Level 3 proposes moving all of the various definitions in each of the sections listed above into the General Terms and Conditions section of the agreement, rather than sprinkling them throughout the appendices. SBC rejects Level 3's suggestion.

105. Further, of these definitions, Level 3 disputes a number of SBC's proposed definitions and incorporates herein by reference its positions stated in the Disputed Points List (attached hereto as Appendix B).

TIER III — GT
ISSUE FOUR: Legal Interpretation

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Section 7.1

SS7 Appendix, Section 9.1

Out of Exchange Appendix, Section 10.1

Coordinated Hot Cuts Appendix, Section 4.1

Clearinghouse Appendix, Section 11.1

Emergency Services Appendix, Section 11.1

UNE Appendix, Section 21.1

Interconnection Interconnection Trunking Appendix, Section 14.1

Intercarrier Compensation Appendix, Section 19.1

Directory Assistance Listing Appendix, Section 7.1

Appendix SS7, Section 9.1.

106. SBC seeks to have Level 3 confirm SBC's legal interpretation of the terms and conditions of the agreement, and the relation of these provisions to Section 251 of the federal Act. As such, SBC proposes a large list of various provisions in the ICA to which it avers the parties are in agreement. Level 3 cannot agree to this list, as it is clear from this pleading that the parties are not in agreement to all terms and conditions stated in these sections. Level 3 does not believe that it should be compelled to adopt SBC's legal construction of the effect of an agreement. Level 3 further disagrees with SBC's interpretation of Section 252(i) of the Act.[64] Moreover, SBC previously agreed to incorporate certain previously negotiated items in this agreements, including Section 49 to the General Terms and Conditions, which clearly delineates the Parties' respective obligations vis-à-vis Section 252(i) of the Act. SBC's proposed revisions to these appendices directly contracts the previously agreed upon provisions.

[64] 47 USC 252(i).

E. NETWORK INTERCONNECTION METHODOLOGIES APPENDIX — TIER III ISSUES

TIER III — NIM
ISSUE ONE: Definition of NIMs

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Sections 1.25, 1.27, 2.4, 2.5, 2.6, 2.8.3, 3.3.1, and 3.4.2

107. Level 3 proposes language that would make clear that the parties' respective obligations to interconnect are those methods required by a court of competent jurisdiction, the relevant state or federal agency and states that the interconnection may not be used for purposes not permitted under the Act. Level 3 also proposes language that makes the terms reciprocal in nature. SBC's objection is not clear at the present time.

TIER III — NIM
ISSUE TWO: Legal Interpretation

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Sections 2.8.2, and 2.8.3

108. Level 3 proposes that the parties clarify in their agreement that the parties will, where necessary, provide exchange of traffic via optical networks. SBC objects to Level 3's proposal and believes optical requirements may vary based on the particular situation.

TIER III — NIM
ISSUE THREE: Collocation and Leased Facilities

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Sections 3.1.1, 3.2.1. 3.3.1, and 3.4.2

109. Level 3 proposes clarifications that govern the manner in which SBC is obligated to provide collocation services and obligates SBC to provide leased facilities, where available.

SBC wants to remove terms for leased facilities from the agreement and offer them outside the context of this agreement.

TIER III — NIM
ISSUE FOUR: Point-to-Point SONET

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Section 3.4.2

110. Level 3 proposes that SBC's preferred use of the point-to-point SONET system in no way restricts the Parties from using any technically feasible method. SBC proposes that point-to-point SONET systems be limited to only trunking interconnection and, as such, opposes Level 3's changes.

TIER III — NIM
ISSUE FIVE: Provision of Leased Facilities

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Sections 5.1 and 5.2

111. SBC believes, based on its interpretation of the FCC's TRO and certain court cases, that it is not under an obligation to provide leased facilities to Level 3, and that if it does provide any leased facilities, it will do so only on a "voluntary" basis. Level 3 disagrees with SBC's position because there is no change of law yet in effect with regard to the TRO and SBC has misconstrued the court decision it relies upon.

TIER III — NIM
ISSUE SIX: Minimum Notice.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Network Interconnection Methods, Sections 4.1, and 4.2

112. This provision establishes a minimum notice and meeting period to establish interconnection methods. Level 3 does not believe such advanced meetings are required where

the methods of interconnection are the same as in previous circumstances. Level 3 wants to expedite the interconnection process by waiving the required meetings in those circumstances where the requested interconnection methodology is the same as in previous requests. Level 3 also proposes a 120-day deadline between the requested interconnection and the activation date. SBC's objections are not clear at present.

TIER III — NIM
ISSUE SEVEN: Out of Exchange Traffic

Sections of the Proposed Interconnection Agreement Affected:

Network Interconnection Methods, Section 6.0

113. SBC proposes to make Out of Exchange traffic either interLATA or interexchange traffic. Level 3 believes this traffic should be treated as local for purposes of reciprocal compensation. This issue should be addressed in the Commission's deliberations of Tier I Issue 4, and the Commission should make this section consistent with its findings therein.

F. INTERCONNECTION TRUNKING APPENDIX — TIER III ISSUES

TIER III — ITR
ISSUE ONE: Reciprocal Terms and Obligations

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 1.2

114. Level 3 believes that the terms and obligations adopted in the ITR Appendix should be reciprocal on both parties. Level 3 proposed language that would make clear that the scope of the ITR Appendix is to describe the trunk groups the Parties may use in interconnection for the exchange of Telecommunications Traffic as defined in the General Terms and Conditions of the Agreement. SBC opposes Level 3's changes.

TIER III — ITR
ISSUE TWO: Need for ASR

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 3.1.2–3.1.4, and 8.8.1

115. Level 3 does not have OS/DA trunks, so there is no need to establish an Access Service Request ("ASR") process to complete the interconnection. SBC opposes Level 3's changes.

TIER III — ITR
ISSUE THREE: Transit Traffic.

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 3.2, and 4.3

116. These sections in dispute relate to Transit Traffic, and should be addressed as part of the Larger ITR issues raised in Tier 1. The Commission must make these sections consistent with its findings therein. SBC opposes Level 3's changes.

TIER III — ITR
ISSUE FOUR: Definition and Scope of Trunking Requirements

Sections of the Proposed Interconnection Agreement Affected:

Interconnection Trunking Appendix, Sections 5.2.1–5.2.9, 5.3.1.1, 5.3.3.1, 5.4.1-5.4.4, and 5.6.3

117. These sections relate to the definition and scope of the trunking requirements addressed in the Appendix, and should be addressed as part of the larger ITR issues raised in Tier I. The Commission must make these sections consistent with its findings therein. SBC opposes Level 3's changes.

TIER III — ITR
ISSUE FIVE: Interconnection Trunking Requirements

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Interconnection Trunking Appendix, Sections 4.5, 5.7.1, 5.7.3, 5.7.4, and 6.2.2

118. These sections relate to interconnection trunking requirements, and should be addressed as part of the Tier I ITR issues. The Commission should make these sections consistent with whatever determinations it makes therein. SBC opposes Level 3's changes.

G. INTERCARRIER COMPENSATION APPENDIX — TIER III ISSUES

TIER III — IC
ISSUE ONE: Definition and Scope

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Intercarrier Compensation Appendix, Sections 1.3, 1.4, and 3.2 - 3.7

119. These sections relate to the definition and scope of IC Appendix, and should be addressed as part of the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

TIER III — IC
ISSUE TWO: Duties of Parties

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Intercarrier Compensation Appendix, Sections 4.2, 4.4, 4.5, and 4.6

120. The sections relate to the duties of the parties under the IC Appendix, and should be addressed as part of the larger IC issues raised in Tier I. The Commission must make these sections consistent with its findings therein.

TIER III — IC
ISSUE THREE: EAS

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation, Sections 8.1, 8.2, 8.3, and 8.4

121. SBC proposes language in Section 8.3 that defines when Level 3 will pay the "EAS Additive per MOU" charge when Level 3 uses unbundled local switching to provide services associated with a number with a NXX in an EAS area. Level 3 believes these EAS calls are local calls, and should be subject to the same rates as any other local call. Level 3 expects this issue to be addressed in the larger Tier I IC Appendix issues. The Commission should make these sections consistent with whatever determinations it makes therein.

TIER III — IC[65]
ISSUE FIVE: Termination Payments for IntraLATA 800 Calls

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation, Sections 11.1 and 11.2

122. SBC would make the terminating party pay for IntraLATA 800 calls, even if they are local in nature. Level 3 believes that where an SBC end user calls an 800 number that Level 3 terminates to an end user in that same local area, then local rates would apply.

TIER III — IC
ISSUE SIX: FCC ISP Order

Sections of the Proposed Interconnection Agreement Affected:

Intercarrier Compensation Appendix, Sections 18.1-18.7

123. SBC proposes various modifications related to possible notice of its decision to opt-in to the FCC's ISP regime adopted in the FCC ISP Order, and any possible court or agency interpretations of that order. Level 3 takes no position at this time, but believes the issue should

[65] The Number for Issue IC-4 is held in reserve and is intentionally left blank.

be addressed in the Commission's deliberations of the Tier I ISP Reciprocal Compensation issue. As such, Level 3 urges the Commission to adopt language in this section consistent with the determinations made under the ISP reciprocal Compensation issue above.

H. RECORDING APPENDIX — TIER III ISSUES

TIER III — REC
ISSUE ONE: Obligation of Parties

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Section 3.13

124. This section relates to the obligations of the parties under the Recording Appendix. Level 3 does not believe the parties should limit themselves to just the recording electronic format suggested by SBC, but should be able to reach mutually agreeable formats when the technology and markets allow. SBC rejects Level 3's proposals.

TIER III — REC
ISSUE TWO: EMI Format Capabilities

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Section 4.1.

125. To the extent that Level 3 has developed and provides EMI format capabilities, Level 3 is willing to use them in the Recording Appendix. However, if it has not yet developed those capabilities, then it should not be required to do so just because SBC demands it. Level 3 stands prepared to work with SBC to develop systems that are additional options for recording, assembling and editing of message detail records. SBC argues that its billing systems are not capable of accepting any format other than EMI.

TIER III — REC
ISSUE THREE: Maintenance of Message Details

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Section 5.2.

126. SBC proposes language that limits the Recording Party's liability by limiting the time period for which message details must be maintained to just 60 days. Level 3 believes that the time period should be longer, and suggests 90 days.

TIER III — REC
ISSUE FOUR: Best Efforts for Delivery of Billing Data.

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Section 5.4

127. Level 3 proposes language that states the Parties will use their best efforts to ensure the timely and accurate delivery of billing data between each Party. SBC opposes this change.

TIER III — REC
ISSUE FIVE: Indemnification

Sections of the Proposed Interconnection Agreement Affected:

Recording Appendix, Section 5.6

128. Level 3 proposes changes that would exempt the parties from the indemnification section unless the claim arises from willful misconduct or gross negligence. Level 3 believes this is a standard proposal, and imposes a reasonable limit on the parties ability/need to indemnify each other. Level 3 also points out that the terms are reciprocal. SBC opposes the language.

I. OUT OF EXCHANGE APPENDIX — TIER III ISSUES

TIER III — OET
ISSUE ONE: Language Duplicative of ITR, NIM and IC Appendices.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Out of Exchange Appendix, Section 3.1

129. Level 3 believes this language is duplicative of language in the ITR, NIM, and IC Appendices. Also, CPN does not reflect the physical location of the end user as SBC claims, but rather just indicates the phone number. CPN does not provide location of end user for billing either. Level 3 addressed this issue in relation to Issue 4, above. The CPN issue also occurs in the Intercarrier Compensation, Network Interconnection Methodologies, and the Interconnection Trunking Requirements Appendices, so the Commission should make this section consistent with its determinations in those areas. SBC opposes Level 3's proposals.

TIER III — OET
ISSUE TWO: Language Duplicative of ITR Appendix

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Out of Exchange Appendix, Sections 3.3, 3.4, 3.5, 3.6. 3.8, 4.1, 4.2, 4.3, 4.9, 4.10, and 9.6.

130. Level 3 believes this language is duplicative of language in the ITR Appendix, NIM Appendix and IC Appendix. As such, Level 3 proposes making a reference herein to those provisions in order to avoid inconsistencies and confusion. There is no reason to create an opportunity to make inconsistent terms in a number of different appendices. SBC opposes Level 3's proposal.

TIER III — OET
ISSUE THREE: Clarification.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Out of Exchange Appendix, Section 3.7

131. Level 3 wants to clarify that the quality of such network connections shall be equal to either the existing facilities or as required by Applicable Law. SBC's position is not known at this time.

J. CLEARING HOUSE APPENDIX — TIER III ISSUES

TIER III — CH
ISSUE ONE: Message Exchange Appendix.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Clearinghouse Appendix, Section 1.26

118. Level 3 understands that SBC no longer offers service via a Message Exchange Appendix, and the Parties have not attempted to negotiate the terms thereof. Thus, Level 3 removes the Section. SBC's position is unknown at this time.

TIER III — CH
ISSUE TWO: Billing.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Clearinghouse Appendix, Section 1.27

132. Carriers nationwide exchange alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and ILECs via the CMDS process. Level 3 bills ILECs in Connecticut for reciprocal compensation based upon its terminating recordings, not the originating carrier's records. SBC seeks to force Level 3 to bill for reciprocal compensation based on SBC's category 92 originating records, not Level 3's own CMDS terminating records.

SBC's intention that such billing is technically infeasible does not comport with the actual experience of Level 3 of exchanging invoices for such traffic over the last several years.

TIER III — CH
ISSUE THREE: Record Processing.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Clearinghouse Appendix, Section 2.1

133. Carriers nationwide exchange alternately billed intrastate intraLATA message toll call records and the reporting of appropriate settlement revenues owed by and among participating LECs, CLECs and ILECs via the CMDS process. SBC has not provided an explanation as to why the SWBT territory should be treated any differently for billing reciprocal compensation than the Pac Bell and Ameritech states, which allow for billing based on Level 3's terminating records. SWBT is the only ILEC that requires Level 3 to bill based on SBC's Category 92 records.

134. Further, processing SBC's Category 92 records adds additional costs and delays on Level 3 as recognized by the Texas Commission:

> Therefore, the Commission concludes that, where technically feasible, the terminating carrier's records shall be used to bill originating carriers (excluding transiting carriers) for reciprocal compensation, unless both the originating and terminating carriers agree to use originating records. ….. The Commission finds that the use of terminating records among the parties to bill for reciprocal compensation is a more efficient and less burdensome method to track the exchange of traffic. Terminating records impose less cost upon the terminating carriers than the previous regulatory scheme that used SWBT's 92/99 originating records to bill for reciprocal compensation.[66]

[66] *Texas PUC order*, Dkt. 21982

135. SBC's position is that its systems are set up so as to receive Reciprocal Compensation billing via its Category 92 originating records, not the Level 3 terminating records. As such, it rejects Level 3's position.

K. EMERGENCY SERVICES APPENDIX — TIER III ISSUES

TIER III — ES
ISSUE ONE: 911 Call Routing.

Sections of the Proposed Interconnection Agreement Affected:

Emergency Services Appendix, Section 3.2.2

136. In a situation where the 911 call fails to provide the ANI, the 911 tandem will not know the PSAP to which it should route the call. Level 3 provides language that would require SBC to route such a 911 call to the appropriate emergency call center, just as it would do if the call was made from its own network. SBC's position is not known at this time.

TIER III — ES
ISSUE TWO: Responsibility.

Sections of the Proposed Interconnection Agreement Affected:

Emergency Services Appendix, Section 4.2.11

137. On an issue as important as properly completing emergency 911 calls to the PSAP, it is critical that the terms are clear where one party's obligations begin and the other's ends. Level 3 proposes that the point at which the 911 obligations and responsibilities cross over is the Demarcation Point between the two parties as defined in Section 68.3 of the FCC's Rules.[67] Each party will be responsible for coordination of all 911 issues on their side of the Demarcation Point. SBC's proposed language does not provide any specific point, but just gives a general example of its intent.

[67] 47 CFR § 68.3.

L. UNBUNDLED NETWORK ELEMENTS APPENDIX — TIER III ISSUES

TIER III — UNE
ISSUE ONE: Obligations.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Unbundled Network Elements Appendix, Sections 1.1, 2.1 2.1.1, 2.1.2, 2.1.2.1, 2.1.2.2, 2.1.2.3, 2.1.3, 2.1.4, 2.3, 2.5, 2.5.1, 2.5.2, 2.7,, 2.7.1, 2.7.2, 2.7.3, 2.7.4, 2.7.5, 2.7.6, 2.7.7, 2.7.8, 2.7.9, 2.7.10, 2.8, 2.9, 2.10, 2.13.1, 2.13.2, 2.14.1, 2.14.2, 2.14.3, 2.14.3.1.1, 2.14.3.1.1.1, 2.14.3.1.1.2, 2.14.3.1.2.1, 2.14.3.1.2.2, 2.14.3.2, 2.14.3.3, 2.14.4, 2.14.4.1, 2.14.4.2, 2.14.4.3, 2.14.4, 2.14.4.1, 2.14.5, 2.14.5.2, 2.16.2, 2.16.3.4, 2.16.3.5, 2.16.3.6, 2.16.4, 2.16.4.2, 2.16.5, 2.16.5.1, 2.16.5.1.1, 2.16.5.2-2.16.5.5, 2.16.6, 2.16.1-2.16.2, 2.16.7, 2.17, 2.17.2, 2.17.3, 2.174, 2.17.5, 2.18.1.2, 2.18.2, 2.18.3, 2.18.3.1, 2.18.3.1.1, 2.18.3.1.2, 2.18.3.2, 2.18.4, 2.18.6, 2.18.9, 2.19.1, 2.19.2, 2.19.2.1, 2.19.2.2, 2.19.2.2.1, 2.19.2.2.7, 2.19.3.2, 2.19.4, 2.19.5, 2.19.7, 2.19.7.1, 2.19.7.4, 2.19.7.4.2, 2.20, 2.21, 2.22, 6.3.1, 6.3.4, 6.3.4.1, 7.2.1, 7.2.1.1, 7.2.1.2, 7.2.1.2.1, 7.2.1.3, 7.2.1.3.1, 8.2.1, 8.5.2, 8.5.3, 13.3.1, 13.3.4.2, 13.3.5.1, 13.5.2, 13.5.3, 14.3.1, 14.4.1, 14.8.1 14.11.3, 15.1, 18.2, 19.6, and 19.8.1

138. Level 3 generally disagrees with SBC's position with respect to the obligations imposed on SBC to provide UNEs. These sections all relate to what Level 3 views as SBC's attempts to force Level 3 to waive certain rights it has under current law. For instance, some of these sections limit the obligation to provide UNEs to just those imposed by 47 CFR § 251. Level 3 believes that SBC is obligated to provide UNEs not only under § 251, but also §§ 252 and 271 of the Act, as well as pursuant to applicable state laws and commission orders. Level 3 believes that the Agreement must acknowledge the existence of unbundling rights under not only Section 251, but under Sections 252, 271 and applicable state law.

139. As another example, some of the listed sections present SBC's interpretation of the FCC's *Triennial Review Order*, *USTA II*, and *NARUC II*. Level 3 does not agree with SBC that these orders say what SBC alleges them to say. As such, Level 3 cannot agree to the terms based upon SBC's interpretations of these orders and Level 3 requests that the Commission adopt Level 3's proposals.

TIER III — UNE
ISSUE TWO: "Lawful UNEs".

Sections of the Proposed Interconnection Agreement Affected:

Unbundled Network Elements Appendix, Sections 1.1, 2.1, 2.6, 2.7, 2..7.3, 2.7.4, 2.7.5, 2.7.7,2.7.8, 2.7.10, 2.8-2.10, 2.13.1, 2.13.3, 2.14, 2.14.1-2.14.3, 2.14.3.1.1, 2.14.3.2, 2.14.4, 2.14.4.1, 2.14.5, 2.14.5.2, 2.15, 2.15.1, 2.16, 2.16.1-2.16.3.6, 2.16.4, 2.16.4.1, 2.16.5, 2.17, 2.17.1, 2.17.3, 2.17.5, 2.17.5.1, 2.18.1, 2.18.2, 2.18.4.1, 2.18.5-2.18.8, 2.19, 2.19.1, 2.19.2, 2.19.7.4, 2.20-2.22, 3.1-3.3, 3.3.4-3.3.6, 3.3.8, 4.1.3, 4.17, 6.3.1, 6.4.2, 6.4.2.1-6.4.2.3, 7.1-7.9, 8.0, 8.1-8.3, 8.3.4-8.3.5, 8.8.4, 8.5, 8.5.1-8.5.6, 9.1-9.4, 9.6-9.12, 9.12.1-9.12.6, 9.12.8, 9.12.9, 9.11-9.12, 9.13, 9.14.2, 9.15, 9.15.1, 9.15.1.3-9.15.1.6, 9.15.2, 9.16, 9.16.1, 9.16.2, 10.2, 10.3-10.3.1, 10.3.6, 10.4.1.1-10.4.1.3, 10.4.2.3, 10.5, 13.0-13.2.1, 13.3, 13.3.1-13.3.4, 13.3.5-13.3.5.1, 14.0-14.4, 14.4.1, 14.5.1, 14.6.1, 14.6.1.2, 14.6.1.2, 14.6.2, 14.7, 14.7.1-14.7.3, 14.8.1-14.8.3, 14.9-14.9.2, 14.10, 18.1-18.2, 8.4-18.14, 19.1-19.8.1, and 19.13.1-19.13.2

140. Each of these sections contain the phrase "lawful UNEs", and Level 3 proposes striking the word "lawful". Level 3 suggests that SBC's use of the term "lawful" when describing UNEs is inappropriate in the context of an interconnection agreement. The phrase does not appear anywhere in the Telecom Act or any FCC orders or regulations governing UNEs. SBC's position is not known at this time.

TIER III — UNE
ISSUE THREE: Reservation of Rights.

Sections of the Proposed Interconnection Agreement Affected:

Unbundled Network Elements Appendix, Sections 2.2, 2.12, 2.14, 2.16.1, 2.16.2, 2.16.3.3, 2.16.3.3.1, 2.16.3.3.2, 2.16.3.3.3, 2.16.3.4, 2.19.8, 2.22, 20.1, 20.2, 20.3, and 20.4

141. The Appendix contains a detailed section relating to Reservation of Rights, found in Section 20. The original SBC-proposal in Section 2.2 et seq. also serves as a reservation of rights and is not necessary in light of the more detailed language in Section 20. The disputes related to Section 2.2 show how the terms are redundant. SBC's position is not known at this time.

TIER III — UNE
ISSUE FOUR: Change of Law Provision.

Sections of the Proposed Interconnection Agreement Affected:

Unbundled Network Elements Appendix, Sections 2.4, 2.5. 2.5.1, 2.5.2, 2.14.3.1.1, 2.16.3.3.2, 2.16.3.3.3, 2.17, and 2.18.6

142. The Change of Law provisions in the General Terms and Conditions section of the Agreement fully address SBC's and Level 3's obligations and rights under the Agreement. Level 3 believes that it would be unnecessarily repetitive to replicate those rights again herein, and may lead to inconsistencies between the various provisions in the agreement. Level 3 also is concerned that multiple versions of Change in Law provisions will lead to confusion in the future when there is an event that may or may not classify as a Change in Law depending on which provision in the Agreement would apply. SBC's position is not known at this time.

TIER III — UNE
ISSUE FIVE: Switch Conversions.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Unbundled Network Elements Appendix, Section 2.13.3

143. Level 3 believes that the parties should govern the switch conversion process in a manner generally consistent with the FCC Notice of Network Changes regulations found in 47 CFR 51.325, 327 and 329. By doing so, the Central Office Switch Conversions can be done with minimal impact on the network and Level 3's ability to process customer orders. SBC's position is not known at this time.

M. DIRECTORY ASSISTANCE LISTINGS — TIER III ISSUES

TIER III — DAL
ISSUE ONE: Scope and Definitions.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

Directory Assistance Listing Appendix, Sections 2.1, 5.1, and 5.3

144. These sections relate to the scope and definition of the obligations under the Appendix. Section 5.3 clarifies that, in the event that CLEC faces an action that specifically alleges that an error or omission appears in DA listing information, SBC will assume and undertake its own defense, and assist in the defense of CLEC. Level 3 views these changes as clarifications and not an imposition of additional terms and, as such, should not be controversial. SBC objects to the modifications.

N. SS7 APPENDIX — TIER III ISSUES

TIER III — SS7
ISSUE ONE: Reciprocal Application.

Sections of the Proposed Interconnection Agreement Affected:

SS7 Appendix, Sections 2.4, 2.4.1, 2.4.1.1, 2.4.2.1, 2.5, 2.6, 2.7, 2.8, 2.9.2, 2.9.3, 2.9.4, 2.9.5, 2.9.6, 2.11.1, 2.11.2, 2.12.1, 3.2.1, 3.2.2, 3.2.3, 3.3, 3.4.1, 3.4.4, 3.4.5, 3.4.6, 3.4.7, 4.1, 4.2, 4.3, 4.4, and 5.1

145. SBC's initial proposal for SS7 Appendix was one-sided in nature. Level 3 proposes that the terms and obligations under the Appendix should be reciprocal in nature, thus binding both parties to its terms. Level 3 also proposed that the terms of the SS7 Appendix will be operable in all 13 SBC states in order to allow for uniformity of network interconnections. As such, Level 3 proposed making all references in the Appendix to "SBC-12STATE" and "CLEC" to either specific party names (i.e., "CLEC" to "Level 3"), "SBC-12STATE" to SBC-13STATE", or change specific company names to a more inclusive term like "Party". Level 3 believes these changes will assure reciprocal application of the Appendix. SBC opposes Level 3's modifications.

TIER III — SS7
ISSUE TWO: Technical Requirements.

Sections of the Proposed Interconnection Agreement Affected:

SS7 Appendix, Sections 2.8, 2.9.4, 2.10.2, 2.10.3, 2.12.3, 3.2.2, 3.4.2, 3.4.2.1, 3.4.2.2, 3.4.3, 3.4.8, 3.5, 3.5.1, 4.1, 4.3, 4.4, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, and 6.1

146. Level 3 has proposed a series of modifications to the Appendix detailing the technical requirements for SS7 under the Appendix. Level 3's changes clarify the types of network requirements specifically contemplated in the Appendix and manner in which the two company's networks will operate. SBC opposes Level 3's modifications.

TIER III — SS7
ISSUE THREE: Charges for SS7 Services.

<u>Sections of the Proposed Interconnection Agreement Affected:</u>

SS7 Appendix, Sections 2.9.6, 2.10.4, 2.11.2, 7.1, 7.3, 7.3.1, 7.4, 7.4.1, 7.5, 7.5.1, 7.6, 7.6.1, 8.0, 8.1, 8.2, 8.2.1, 8.2.2, 8.2.3, 8.3, 8.3.1, 8.3.1.1, 8..2, 8.3.2.1, 8.3.2.2, 8.3.3, 8.3.3.1, 8.4, 8.4.1, 8.5, 8.5.1, 8.6, and 8.6.1

147. SBC's initial proposal contained a number of sections imposing terms related to the charges SBC will assess against Level 3 for SS7-related services.

VI. <u>CONCLUSION</u>

In its Proposed Interconnection Agreement (attached hereto as Appendix C), Level 3 has presented reasonable modifications to the Prior Interconnection Agreement that are consistent with the, FCC's Rules, this Commission's Orders, public policy and with the public interest, convenience, and necessity. Level 3's Proposed Interconnection Agreement will help benefit the evolving telecommunications services and economic development within the state, long stated goals of the Illinois Commerce Commission, the Legislature, and Governor.

WHEREFORE, Level 3 Communications, LLC respectfully requests that this Commission:

a.) Conduct an arbitration pursuant to Section 252(b) of the Federal Act, 47 USC § 252(b);

b.) Resolve the above listed items, disputed between the parties, in Level 3 Communications, LLC's favor;

c.) Find that Level 3 Communications, LLC's contract proposals are consistent with the applicable law and commercially reasonable;

d.) Issue an Order adopting the Proposed Interconnection Agreement of Level 3 Communications, LLC, attached hereto as Exhibit C; and,

Grant such other relief as is fair and justified.

Respectfully submitted,

LEVEL 3 COMMUNICATIONS, LLC.

By: ___________________________________

Henry T. Kelly
Joseph E. Donovan
Kelley Drye & Warren LLP
333 West Wacker Drive
Chicago, Illinois 60606

Richard E. Thayer, Esq.
Director – Intercarrier Policy
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield CO 80021

Erik Cecil
Regulatory Counsel
Level 3 Communications, LLC
1025 Eldorado Boulevard
Broomfield, CO 80021

Attorneys For
Level 3 Communications, LLC

Date: June 8, 2004

VERIFICATION

I, Joseph E. Donovan, an attorney, do on oath depose and state that the facts contained in the foregoing document are true and correct to the best of my knowledge and belief.

____
Joseph E. Donovan
Attorney for Level 3 Communications, LLC

Signed and sworn before me
This ____ day of June, 2004

____
Notary Public

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

In the Matter of Level 3 Communications,	)	
LLC's Petition for Arbitration Pursuant to	)	
Section 252(b) of the Communications Act of	)	Case No.
1934, as amended by the Telecommunications	)	
Act of 1996, and the Applicable State Laws for	)	
Rates, Terms, and Conditions of Interconnection	)	
with Illinois Bell Telephone Company d/b/a	)	
SBC Illinois	)	

PETITION FOR ARBITRATION

APPENDIX A

NEGOTIATION LETTERS

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company d/b/a SBC Illinois	)	Case No.

PETITION FOR ARBITRATION

APPENDIX B

DISPUTED POINTS LIST

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company d/b/a SBC Illinois	)	Case No.

PETITION FOR ARBITRATION

APPENDIX C

LEVEL 3 PROPOSED INTERCONNECTION AGREEMENT

General Terms and Conditions
Appendix 1: Interconnection Trunking
Appendix 2: Recording
Appendix 3: Reciprocal Compensation
Appendix 4: Physical Collocation
Appendix 5: Virtual Collocation
Appendix 6: Unbundled Network Elements
Appendix 7: Network Interconnection Methods
Appendix 8: Number Portability
Appendix 9: Numbering
Appendix 10: Out of Exchange Traffic
Appendix 11: Emergency Services / 911
Appendix 12: OSS - Resale
Appendix 13: Coordinated Hot Cuts
Appendix 14: Clearinghouse
Appendix 15: Directory Assistance Listing
Appendix 16: Performance Measures
Appendix 17: Pricing
Appendix 18: SS7

STATE OF ILLINOIS

BEFORE THE ILLINOIS COMMERCE COMMISSION

*** * * * ***

In the Matter of Level 3 Communications, LLC's Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, and the Applicable State Laws for Rates, Terms, and Conditions of Interconnection with Illinois Bell Telephone Company d/b/a SBC Illinois	)	Case No.

PETITION FOR ARBITRATION

APPENDIX D

LEVEL 3 DISCOVERY REQUESTS